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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER & ROBERT O. SCHOLZ, A PARTNERSHIP, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

FILED SEPTEMBER 9, 1944.

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[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 23189

UNITED STATES OF AMERICA, Plaintiff,

v.

1. AMERICAN TELEPHONE & TELEGRAPH COMPANY, a Corporation, 725 13th Street, N. W., Washington, D. C.
2. THE CHESAPEAKE & POTOMAC TELEPHONE COMPANY, a Corporation, 725 13th Street, N. W., Washington, D. C.
3. AMBASSADOR, INC., a Corporation, 1412 K Street, N. W., Washington, D. C.
4. WASHINGTON-ANNAPOLIS HOTEL COMPANY, a Corporation, 1111 H Street, N. W., Washington, D. C.
6. DAVID A. BAER & ROBERT O. SCHOLZ, a Partnership, Blackstone Hotel, 1016 17th Street, N. W., Washington, D. C.
7. WASHINGTON PROPERTIES, INC., a Corporation, Carlton Hotel, 923 16th Street, N. W., Washington, D. C.
8. THE CARROLL ARMS HOTEL, INC., a Corporation, 1st & C Streets, N. E., Washington, D. C.
9. COMMODORE HOTEL CORPORATION, F and North Capitol Streets, Washington, D. C.
10. WASHINGTON HOTEL COMPANY, a Corporation, Continental Hotel, North Capitol between D & E Streets, Washington, D. C.
11. DODGE HOTEL CORPORATION, 20 E Street, N. E., Washington, D. C.
12. JAMES S. GORE, Owner, Fairfax Hotel, 2100 Massachusetts Avenue, N. W., Washington, D. C.
13. HAMILTON REALTY CORPORATION, Hamilton Hotel, 14th & K Streets, N. W., Washington, D. C.
14. HARRINGTON HOTEL COMPANY, INC., a Corporation, 11th & E Streets, N. W., Washington, D. C.
15. HAY ADAMS CORPORATION, 800 16th Street, N. W., Washington, D. C.
16. THE LAFAYETTE, INC., a Corporation, 16th & Eye Streets, N. W., Washington, D. C.
17. THE LEE SHERATON CORPORATION, 15th & L Streets, N. W., Washington, D. C.
18. LINWOOD HOTEL CORPORATION, Hotel Martinique, 1211 16th Street, N. W., Washington, D. C.
19. MAYFLOWER HOTEL CORPORATION, Connecticut Avenue & DeSales St., N. W., Washington, D. C.

20. New Colonial Hotel, Inc., a Corporation, 1156 15th St., N. W., Washington, D. C.
21. Lawrence Gassenheimer, Owner, Pennsylvania Hotel, 20 F Street, N. W., Washington, D. C.
22. Robert D. Blackistone, Owner, Plaza Hotel, 331 1st St., N. E., Washington, D. C.
23. The Raleigh Hotel Company, a Corporation, 12th & Pennsylvania Ave., N. W., Washington, D. C.
24. Oscar A. de Lima & Edwin A. de Lima, a Partnership, Roger Smith Hotel, 18th & Pennsylvania Avenue, N. W., Washington, D. C.

[fol. 2] 25. Shoreham Hotel Corporation, 2500 Calvert Street, N. W., Washington, D. C.

26. Hotel Statler Company, Inc., a Corporation, 16th & K Streets, N. W., Washington, D. C.
27. Twenty-Four Hundred Sixteenth Street, Inc., a Corporation, Hotel 2400, 2400 16th Street, N. W., Washington, D. C.
28. Washington Properties, Inc., a Corporation, Wardman Park Hotel, 2660 Woodley Road, N. W., Washington, D. C.
29. Texwash Corporation, Hotel Washington, 15th & Pennsylvania Avenue, N. W., Washington, D. C.
30. The Willard, Inc., a Corporation, Pennsylvania Avenue & 14th Street, N. W., Washington, D. C., Defendants

Complaint—Filed February 19, 1944

The plaintiff, United States of America, by Edward M. Curran, United States Attorney for the District of Columbia, for its claim against the defendants alleges on information and belief:

1. The United States of America is a sovereign body politic.

2. Each of the defendants, American Telephone & Telegraph Company and The Chesapeake & Potomac Telephone Company, is a corporation organized and existing under and by virtue of the laws of New York, and does business in the District of Columbia and has an office and place of business at 725 13th Street, N. W., Washington, D. C.

3. Defendant, The Chesapeake & Potomac Telephone Company, is an operating telephone company furnishing telephone communication service within the District of Columbia, and jointly with defendant, American Telephone &

Telegraph Company, other Associated Companies of the Bell Telephone System, and other connecting telephone companies, it furnishes interstate and foreign message toll telephone communication service to and from the District of Columbia. Defendant, American Telephone and Telegraph Company, is an operating telephone company furnishing interstate and foreign message toll telephone communication service throughout the United States, including the District of Columbia, and between the United States and foreign points.

[fol. 3] 4. The following defendants are made parties pursuant to the provisions of Section 411(a) of the Communications Act of 1934 (47 U. S. C. Sec. 411(a)). All of these defendants are hotel companies and are either individuals, partnerships or corporations as shown in the following table and each has a place of business in the District of Columbia at the address listed in the following table:

Name of Individual, Partnership, or Corporation	Trading as or name of hotel	State of Incorporation	Place of business within the District of Columbia
Ambassador, Inc.	Ambassador Hotel	Dela.	1412 K St., N. W.
Washington-Annapolis Hotel Company	Annapolis Hotel	Dela.	1111 H St., N. W.
David A. Baer & Robert O. Scholz, Partnership	Blackstone Hotel		1016 17th St., N. W.
Washington Properties, Inc.	Carlton Hotel	Dela.	923 16th St., N. W.
The Carroll Arms Hotel, Inc.	Carroll Arms Hotel	D. C.	1st & C Streets, N. E.
Commodore Hotel Corp.	Commodore Hotel	Dela.	F & North Capitol
Washington Hotel Company	Continental Hotel	D. C.	N. Capitol bet. D & F
Dodge Hotel Corporation	Dodge Hotel	N. Y.	20 E Street, N. E.
James S. Gore, Owner	Fairfax Hotel		2100 Mass. Ave., N. W.
Hamilton Realty Corp.	Hamilton Hotel	N. Y.	14th & K Streets, N. W.
Harrington Hotel Co., Inc.	Hotel Harrington	Dela.	11th & E Sts., N. W.
Hay Adams Corporation	Hay-Adams House	N. Y.	800 16th St., N. W.
The Lafayette, Inc.	Lafayette Hotel	D. C.	16th & Eye Sts., N. W.
The Lee Sheraton Corp.	The Sheraton Hotel	Dela.	15th & L Sts., N. W.
Linwood Hotel Corp.	Hotel Martinique	Md.	1211 16th St., N. W.
Mayflower Hotel Corp.	The Mayflower	Dela.	Conn. Ave. & DeSales, N. W.
New Colonial Hotel, Inc.	New Colonial Hotel	Dela.	1156 15th St., N. W.
Lawrence Gassenheimer, Owner	Pennsylvania Hotel		20 F Street, N. W.
Robert D. Blackistone, Owner	Plaza Hotel		331 1st Street, N. E.
The Raleigh Hotel Co.	The Raleigh Hotel	D. C.	12th & Penn. Ave., N. W.
Oscar A. de Lima & Edwin A. de Lima, Partnership	Roger Smith Hotel		18th & Penn. Ave., N. W.
Shoreham Hotel Corp.	Shoreham Hotel	Dela.	2500 Calvert St., N. W.
Hotel Statler Company, Inc.	Hotel Statler	N. Y.	16th & K Streets, N. W.
Twenty-Four Hundred Sixteenth Street, Inc.	Hotel 2400	Dela.	2400 16th St., N. W.
Washington Properties, Inc.	Wardman Park Hotel	Dela.	2660 Woodley Rd., N. W.
Texwash Corporation	Hotel Washington	Dela.	15th & Penn. Ave., N. W.
The Willard, Inc.	Willard Hotel	Va.	Penn. Ave. & 14th St., N. W.

All of the foregoing defendant hotels except the Statler Hotel are members of the Hotel Association of Washington, D. C., Inc., a corporation.

All of the foregoing defendant hotels except the Statler Hotel are members of the Hotel Association of Washington, D. C., Inc., a corporation.

[fol. 4] 5. This action is brought pursuant to the provisions of Section 401(c) of the Communications Act of 1934, (47 USC, Sec. 401(c)), as amended, to enjoin violation of Section 203 thereof (47 USC, Sec. 203) by defendants.

6. This action is instituted by the direction of the Attorney General of the United States.

7. The Communications Act of 1934, as amended, applies, and at all times mentioned herein has applied, to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy (47 USC, Sec. 152(a)).

8. The Federal Communications Commission, hereinafter called the Commission, was created by the Communications Act of 1934 (47 USC, Sec. 151) to execute and enforce the provisions of that Act.

9. The defendants, American Telephone & Telegraph Company and The Chesapeake & Potomac Telephone Company, are common carriers engaged in interstate and foreign telephone communication by wire and radio.

10. As such common carriers, it is the duty of each of the defendants, American Telephone & Telegraph Company and The Chesapeake & Potomac Telephone Company, under the Communications Act of 1934 (47 USC, Sec. 203(a)) to file with the Commission schedules showing all charges for itself and its connecting carriers for interstate and foreign telephone communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges.

11. Under the Communications Act of 1934 (47 USC Sec. 203) upon the filing of such schedule, it is unlawful for any change to be made in the charges, classifications, regulations or practices so filed except after thirty days' notice to the Commission and to the public, and it is unlawful

[fol. 5] for any carrier to charge, demand, collect or receive a different compensation for interstate or foreign telephone communications, or for any service in connection therewith, other than the charges specified in the schedule then in effect, or to extend to any person any privileges or facilities in such communication, or to employ or enforce any classifications, regulations or practices affecting such charges, except as specified in such schedule.

12. Defendants provide telephone service to guests and others in the defendant hotels through private branch exchange (hereinafter referred to as "PBX") installations, made pursuant to subscription contracts between defendant, The Chesapeake and Potomac Telephone Company, on the one hand, and the defendant hotels on the other hand. Telephone instruments connected with the PBX switchboards, termed "extension stations", are located in the hotel rooms, and to some extent in the administrative offices, lobbies, or elsewhere in and around the hotel premises, such as, in valet shops, drug stores, and the like. Both calls incoming to, and outgoing from persons on the hotel premises are handled through the PBX switchboard and extension stations. These installations are also used for intercommunicating calls wholly within the hotel. The PBX switchboards and extension stations are owned, installed, and maintained by defendant, The Chesapeake & Potomac Telephone Company, which retains title to the PBX switchboard, the extension stations, and the associated plant and equipment. The Chesapeake and Potomac Telephone Company also provides in its tariffs on file with the Public Utilities Commission of the District of Columbia against any connections or attachments to facilities or equipment furnished by it when the connection or attachment is not furnished or authorized by it; and that subscribers may not rearrange, disconnect or remove any apparatus or wiring installed by defendant, The Chesapeake and Potomac Telephone Company, or permit others to do so, except upon written consent of defendant, The Chesapeake and Potomac Telephone Company.

[fol. 6] 13. The Chesapeake and Potomac Telephone Company tariffs on file with the Public Utilities Commission of the District of Columbia for PBX service provide that:

"All operating at the subscriber's premises must be performed at the expense of the subscribers and

must conform with the rules and regulations which the Telephone Company may adopt to maintain a proper standard of service."

These tariffs also provide for installation charges for the PBX equipment and regular monthly charges for its use. A monthly charge is also made by defendant, The Chesapeake and Potomac Telephone Company, for each PBX trunk and for each PBX extension station. The charges for interstate and foreign telephone communications which are filed with the Federal Communications Commission by the defendant telephone companies apply to telephone communications to or from the PBX extension stations located on the premises of defendant hotels.

14. Under the presently effective tariffs of the defendant, The Chesapeake and Potomac Telephone Company, on file with the Public Utilities Commission of the District of Columbia, PBX service is "measured" or "message rate" service and the use of such service is not restricted to the subscriber or the subscriber's agents or representatives.

15. The tariffs of defendant, The Chesapeake and Potomac Telephone Company, on file with the Public Utilities Commission of the District of Columbia contain a general regulation that "the subscriber assumes responsibility for all charges for local messages and toll messages sent from the subscriber's station and for toll messages received at such station on which the charges are reversed with the consent of the person called." In June, 1941, however, it included a provision in its tariffs on file with the Public Utilities Commission of the District of Columbia for the purpose, "of relieving the hotel of payment of a charge for telephone service used by a transient guest when the guest has left the hotel without paying his hotel bill and when the charge cannot be collected from the guest." This tariff [fol. 7] regulation provides that "a subscriber catering principally to transients and licensed to operate as a hotel shall collect for, and remit to the Telephone Company, its charges incurred by such transients for local and toll messages."

16. Defendant, The Chesapeake and Potomac Telephone Company, has on file with the Commission tariff schedules, concurred in by defendant, The American Telephone and

Telegraph Company, which show charges, and classifications, practices and regulations affecting such charges, for interstate and foreign message toll telephone communication service. Defendants, and each of them, have charged, demanded, collected or received for such telephone communication service to guests or others at defendant hotels an extra charge, designated as a "surcharge" or "service charge", in addition to the charges specified in the effective and applicable tariff schedules of defendant telephone companies.

[fol. 8] 17. On January 6, 1942 the Commission issued an order in its Docket No. 6255 instituting an investigation for the purpose of determining whether all or any charges for or in connection with interstate and foreign telephone communication by use of telephones on the premises of hotels, apartment houses and clubs in the District of Columbia, are within the jurisdiction of the Commission under the Communications Act of 1934; and what tariffs, if any, should be filed with the Commission showing all or any such charges. A copy of such Order is attached hereto as Exhibit 1.

18. Defendant telephone companies were made respondents to the proceeding, and they were ordered to appear and show cause why their filed tariffs with respect to interstate and foreign telephone communications should not show any and all charges for or in connection with such communications by the use of telephones on the premises of hotels, apartment houses, and clubs in the District of Columbia. The order also provided that copies thereof be served on the Hotel Association of Washington, D. C., Inc., and on the Apartment House Owners and Managers Association in the District of Columbia; and that any hotel, apartment house, or club might appear and participate in any proceedings under the order.

19. On February 9, 1942, the two defendant telephone companies filed their respective answers with the Commission. On March 23, 1942, the Hotel Association of Washington, D. C., Inc., filed with the Commission a "special appearance" and a motion to dismiss the proceeding, alleging that it is a nonprofit membership corporation and that all of the principal hotels in the District of Columbia are members thereof. It requested the Commission to dis-

miss the proceeding, on the ground that the special charges referred to in the Commission's order of January 6, 1942 are not within the jurisdiction of the Commission under the Communications Act of 1934. On March 31, 1942, the Commission denied this motion.

20. On December 10, 1943 after hearing and oral argument in which defendant hotel companies, the Hotel Association of Washington, D. C., Inc. and others participated, the Commission issued its Report (a copy of which is attached as Exhibit 2) in which it found that the surcharges hereinabove referred to are charges for and in connection [fol. 9] with telephone communication service, and that insofar as such surcharges are collected from users for and in connection with the use of interstate or foreign communication service covered by the Communications Act of 1934, they are subject to the jurisdiction of the Commission. The Commission also found that if such surcharges are to be collected at all, they must be properly shown in effective tariff schedules filed by defendant telephone companies with the Commission. The Commission further found that the hotels which collect surcharges with respect to interstate and foreign telephone service for which defendant telephone companies have filed tariffs with the Commission are agents of such telephone companies. Alternatively, the Commission found that each hotel receives PBX service as a subscriber, and as such, it can receive the service only subject to such proper tariff conditions as are attached.

21. On December 10, 1943 the Commission also issued an order (a copy of which is attached as Exhibit 3) requiring:

(a) That the defendants, American Telephone & Telegraph Company, and The Chesapeake & Potomac Telephone Company file tariff schedules with the Commission which are just, reasonable, not unjustly or unreasonably discriminatory or otherwise unlawful, which shall show all charges collected by hotels, apartment houses and clubs in the District of Columbia for and in connection with interstate and foreign telephone communications, for which communications effective tariff schedules of said telephone companies are presently on file with the Commission.

(b) That such tariff schedules as are required by the Order to be filed may consist of a tariff regulation

which is just and reasonable, not unjustly or unreasonably discriminatory or otherwise unlawful, which contains specific provisions with respect to the conditions upon which telephone service under tariffs on file with the Commission is furnished by said telephone companies to the hotels, apartment houses and clubs.

(c) That the Order should be effective on the 15th day of January, 1944, and that such tariff schedules required by the Order should be filed on or before that date to be effective on the 15th day of February, 1944.

22. On January 15, 1944 the Commission on petition of defendant telephone companies, extended until January 22, 1944 the date for the filing of the above tariff schedules.

23. On January 22, 1944, the defendant The Chesapeake & Potomac Telephone Company filed with the Commission original page 11-A (a copy of which is attached as Exhibit 4), to its tariff F. C. C. No. 3 concurred in by defendant [fol. 10] American Telephone and Telegraph Company, effective 12:01 A. M. February 15, 1944, providing as follows:

"Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

24. Defendant telephone companies have offered to pay to defendant hotels a commission of 15% of the amounts collected by said defendant hotels for interstate and foreign message toll telephone communications to and from telephone extension stations located on the premises of said hotels, in lieu of the surcharges or service charges on such communications theretofore collected by said hotels.

25. On and after 12:01 A. M. February 15, 1944, the above quoted tariff schedule has been and is a legally effective schedule showing the charges, and the classifications, practices, and regulations affecting such charges, for interstate and foreign telephone communication service to and from telephone extension stations located on the premises of the defendant hotels.

26. Notwithstanding the provisions of the foregoing tariff schedule and the provisions of Section 203 of the Communications Act of 1934 (47 U. S. C. Sec. 203), each of the defendants has illegally continued and is illegally continuing to charge, demand, collect, or receive surcharges or service charges for and in connection with interstate and foreign message toll telephone communications to and from telephone extension stations located on the premises of defendant hotels in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of the defendant telephone companies on file with the Commission and will continue illegally to charge, demand, collect or receive such surcharges or service charges unless restrained by order of this Court.

Wherefore, the plaintiff prays:

1. That a temporary or interlocutory injunction be entered herein

[fol. 11] (a) Restraining the defendants and each of them from charging, demanding, collecting or receiving any charge for or in connection with any interstate or foreign message toll telephone communication to or from telephone stations located on the premises of defendant hotels, in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Commission; and

(b) Restraining the defendant telephone companies and each of them, from furnishing any interstate or foreign message toll telephone communication service to such of defendant hotels as continue to charge, demand, collect or receive any charge for or in connection with any interstate or foreign telephone communication to or from telephone stations located on the premises of defendant hotels, in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Commission.

2. That pending a hearing upon the aforesaid application for a temporary or interlocutory injunction, a preliminary restraining order be issued in terms,

(a) Restraining the defendants and each of them from charging, demanding, collecting or receiving any

charge for or in connection with any interstate or foreign message toll telephone communication to or from telephone stations located on the premises of defendant hotels, in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Commission; and

[fol. 12] (b) Restraining the defendant telephone companies and each of them, from furnishing any interstate or foreign message toll telephone communication service to such of defendant hotels as continue to charge, demand, collect or receive any charge for or in connection with any interstate or foreign message toll telephone communication to or from telephone stations located on the premises of defendant hotels, in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Commission.

3. That after final hearing, this Court adjudge, order and decree that a permanent injunction be issued,

(a) Restraining the defendants and each of them from charging, demanding, collecting or receiving any charge for or in connection with any interstate or foreign message toll telephone communication to or from telephone stations located on the premises of defendant hotels, in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Commission; and

(b) Restraining the defendant telephone companies and each of them, from furnishing any interstate or foreign message toll telephone communication service to such of defendant hotels as continue to charge, demand, collect or receive any charge for or in connection with any interstate or foreign message toll telephone communication to or from telephone stations located on the premises of defendant hotels, in addition to the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Commission.

[fol. 13] 4. That the plaintiff may have such other and further relief in the premises that to the Court may seem just and reasonable.

Edward M. Curran, United States Attorney for the District of Columbia; Wendell Berge, Assistant Attorney General; Arney C. Wiprud, Special Assistant to the Attorney General; William R. Kueffner, Special Assistant to the Attorney General.

[fol. 14] EXHIBIT 1 TO COMPLAINT

56912

Public Notice

1-9-42

Before the Federal Communications Commission
Washington, D. C.

Docket No. 6255

In the Matter of Special Telephone Charges of Hotels, Apartment Houses, and Clubs on Interstate and Foreign Telephone Communications

Order

At a general session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 6th day of January, 1942;

It Appearing from a preliminary investigation that individuals who make interstate or foreign telephone toll calls from telephones located in hotels, apartment houses, or clubs, are in many instances required to pay the hotels, apartment houses, or clubs, certain special charges in addition to the regular toll charges made by the telephone companies; and

It Appearing Further, That such special charges are not shown in any tariffs filed with the Commission covering interstate and foreign telephone communications; and

It Appearing Further, That such a situation exists with respect to the District of Columbia, and that it is desirable for reasons of convenience that the situation in that locality be investigated and considered first;

It Is Ordered, That an investigation upon this Commission's own motion Be, and the Same Is Hereby, Instituted for the purpose of determining:

(1) Whether all or any charges for or in connection with interstate and foreign telephone communications by use of telephones on the premises of hotels, apartment houses, and clubs in the District of Columbia are within the jurisdiction of the Commission under the Communications Act of 1934; and

[fol. 15] (2) What tariffs, if any should be filed with the Commission showing all or any such charges;

It Is Further Ordered, That the American Telephone and Telegraph Company and the Chesapeake and Potomac Telephone Company shall appear and show cause why their filed tariffs with respect to interstate and foreign telephone communications should not show any and all charges for or in connection with such communications by the use of telephones on the premises of hotels, apartment houses, and clubs in the District of Columbia;

It Is Further Ordered, That the American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company be, and they are hereby, each made a party respondent to this proceeding; and that appropriate notice be given them;

It Is Further Ordered, That hearings on the above matter be held as directed by the Commission's Telephone Committee, composed of Commissioners Walker and Wakefield; and that each party respondent in this proceeding file with the Commission, on or before the 9th day of February, 1942, its verified answer to this order;

It Is Further Ordered, That a copy of this order shall be served on the Hotel Association of Washington, D. C., and on the Apartment House Owners and Managers Association in the District of Columbia; and that any hotel, apartment house, or club may appear and participate fully in any proceedings under this order.

By the Commission, T. J. Slowie, Secretary.

[fol. 16] EXHIBIT 2 TO COMPLAINT

72321

Before the Federal Communications Commission
Washington 25, D. C.

Docket No. 6255

P-29

In the Matter of Special Telephone Charges of Hotels, Apartment Houses, and Clubs on Interstate and Foreign Telephone Communications

Appearances.

R. A. Van Orsdel, Esq., and *Bolling R. Powell, Jr.,* Esq., on behalf of The Chesapeake and Potomac Telephone Company; *T. Brooke Price,* Esq., and *E. S. Hawley,* Esq., on behalf of the American Telephone and Telegraph Company; *Joseph C. McGarraghy,* Esq., on behalf of the Hotel Association of Washington, D. C., Inc., *Rufus S. Lusk,* Esq., on behalf of Building Owners and Managers Association of Washington, D. C.; *Robert F. Cogswell,* Esq., on behalf of the Administration of Rent Control for the District of Columbia; *Frank B. Warren,* Esq., *John E. Benton,* Esq., and *Frederick G. Hamley,* Esq., on behalf of the National Association of Railroad and Utilities Commissioners; *Walter R. McDonald,* Esq., Southeastern Association of Railroad and Utilities Commissioners; *Joseph Sherbow,* Esq., on behalf of the Public Service Commission of Maryland; *Lloyd B. Harrison,* Esq., on behalf of the District of Columbia Public Utilities Commission; *Harold J. Cohen,* Esq., and *Daryal A. Myse,* Esq., on behalf of the Federal Communications Commission.

Report of the Commission

This proceeding was instituted by an order of this Commission adopted on January 6, 1942. It was recited in such order that it appeared from a preliminary investigation that individuals who make interstate or foreign telephone toll calls from telephones located in hotels, apartment houses, or clubs, are in many instances required to pay the hotels, apartment houses, or clubs, certain special charges in addition to the regular toll charges made by the

telephone companies; that such special charges are not shown in any tariffs filed with the Commission covering interstate and foreign telephone communications; that such a situation exists with respect to the District of Columbia (hereafter sometimes referred to as the "District"), and that it is desirable for reasons of convenience that the situation in that locality be investigated and considered first,[1] After such recitals, an investigation was ordered for the purpose of determining:

> [fol. 17] (1) Whether all or any charges for or in connection with interstate and foreign telephone communications by use of telephones on the premises of hotels, apartment houses, and clubs in the District of Columbia are within the jurisdiction of the Commission under the Communications Act of 1934; and
>
> (2) What tariffs, if any, should be filed with the Commission showing all or any such charges.

The American Telephone and Telegraph Company (hereafter sometimes referred to as "A. T. & T.") and The Chesapeake and Potomac Telephone Company (hereinafter sometimes referred to as "Chesapeake") were made respondents to the proceeding, and they were ordered to appear and show cause why their filed tariffs with respect to inter-state and foreign telephone communications should not show any and all charges for or in connection with such communications by the use of telephones on the premises of hotels, apartment houses, and clubs in the District. The parties respondent were required to file answers to the order. The order also provided that copies thereof be served on the Hotel Association of Washington, D. C., and on the Apartment House Owners and Managers Association in the District; and that any hotel, apartment house, or club might appear and participate in any proceedings under the order. It was further provided in the order that hearings were to be held as directed by the Commission's Telephone Committee, composed of Commissioners Walker and Wakefield. The Commission duly authorized the two Commissioners to conduct the proceeding.

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[1] Numerous informal complaints concerning such charges have been received by the Commission with respect to various other cities throughout the United States.

The District Public Utilities Commission was invited to participate cooperatively in the proceeding. By a notice of investigation dated January 23, 1942, that Commission instituted its Formal Case No. 311, and adopted the above-described order of the Federal Communications Commission "for the purpose of determining whether all, or any, of the charges for or in connection with telephone communications by the use of telephones on the premises of hotels, apartment houses, and clubs in the District of Columbia are within the jurisdiction of the Public Utilities Commission of the District of Columbia, and what tariffs, if any, should be filed with this Commission showing all or any such charges."

On February 9, 1942, the two respondents filed their respective answers with this Commission. A hearing was subsequently ordered, to begin April 1, 1942. On March 23, 1942, the Hotel Association of Washington, D. C., Inc., filed with this Commission a "special appearance" and a motion to dismiss the proceeding, on the ground that the special charges referred to in the Commission's order of January 6, 1942 are not within the jurisdiction of the Commission under the Communications Act of 1934. On March 31, 1942, the Commission denied this motion.

Hearings were held in April and May, 1942, before Commissioners Walker and Wakefield of this Commission, and Commissioners Hankin and Flanagan of the District Commission. At the opening of such hearings, it was announced that the latter Commission had also denied the motion to dismiss filed by the Hotel Association of Washington, [fol. 18] D. C., Inc., and reserved consideration of the question of jurisdiction until it had gone into the facts of the case. At the hearings, evidence was presented by the two respondents, by the Hotel Association of Washington, D. C., Inc., and by an apartment house association known as the Building Owners and Managers Association of the District of Columbia. In addition, testimony was given by the managers of two clubs in the District.

After the hearings were concluded, the two respondent telephone companies jointly filed a brief and proposed findings of fact and conclusions, and the Hotel Association of Washington, D. C., Inc., filed a brief. In addition, Counsel for this Commission filed a brief in support of a motion to strike from the record certain portions of the presentation made by the respondents.

The principal issue in this proceeding is whether this Commission has jurisdiction over such special charges as may be collected from users by hotels, apartment houses, and clubs in the District with respect to interstate and foreign telephone calls, in addition to the charges for such calls stated in the applicable tariffs filed with this Commission. Such special charges are hereafter referred to as "surcharges." Two additional subsidiary issues were raised by the respondent telephone companies: (1) whether because the activities of the hotels, apartment houses, and clubs in connection with toll calls relate to establishment and maintenance of connections between the telephone station and the toll switchboard, the service with respect to which the surcharge is collected is "wire telephone exchange service," so that the surcharges are excluded from the jurisdiction of this Commission by Section 221(b) of the Communications Act of 1934; and (2) whether telephone service between telephone stations within the District and stations outside the District but within the socalled "Washington Metropolitan Area," to which interstate inter-zone charges apply, is "wire telephone exchange service," so that surcharges collected as to such service are excluded from this Commission's jurisdiction by Section 221(b) of the Communications Act of 1934. A fourth issue, presented by contentions of the Hotel Association and the Building Owners and Managers Association, is whether the District Emergency Rent Act excludes this Commission from jurisdiction over the surcharges.

Commissioners Walker and Wakefield issued two reports proposed by them for adoption by the Commission, and the procedure specified to be subsequently followed was that provided with respect to a Proposed Report of the Commission. At the same time, in its proceeding, the District Commission issued an order transmitting tentative findings and conclusions. The first of the two reports issued by Commissioners Walker and Wakefield dealt with all the issues herein except that of jurisdiction over surcharges collected as to interstate interzone service, and the second report was devoted to that one issue. The respondent telephone companies have filed exceptions to these two proposed reports, and a brief in support of such exceptions. The Hotel Association has filed exceptions to the first of the two reports, and a brief in support of those exceptions.

In addition, on petitions by the National Association of Railroad and Utilities Commissioners, the Southeastern [fol. 19] Association of Railroad and Utilities Commissioners (which includes the State Corporation Commission of Virginia in its membership), and the Public Service Commission of Maryland, these organizations were allowed to intervene in all future proceedings herein regarding the matter of interstate interzone rates. The National Association of Railroad and Utilities Commissioners and the Public Service Commission of Maryland filed exceptions to the proposed report dealing with the matter of interstate interzone rates, and briefs in support of their exceptions. The Southeastern Association's petition for intervention also requested reconsideration of the matter of interstate interzone rates, and it filed a brief in support of such request. Requests by the parties for oral argument were granted, and oral argument was held on September 9, 1943, before this Commission and Commissioners Flanagan and Hankin of the District Commission. Oral argument was presented on behalf of the respondent telephone companies, the Hotel Association, and the National Association of Railroad and Utilities Commissioners. Thereafter, pursuant to leave given at the argument, a supplemental statement was filed by the respondents, and a supplemental brief was filed by the Hotel Association.

The District Commission is concurrently issuing its report and order in its proceeding.

Chesapeake is an operating telephone company furnishing telephone communication service in the District. Also, jointly with the Chesapeake and Potomac Telephone Company of Baltimore City and the Chesapeake and Potomac Telephone Company of Virginia, it furnishes such service in territory in Maryland and Virginia adjacent to the District. In addition, Chesapeake furnishes interstate message toll telephone service jointly with A. T. & T., other Associated Companies of the Bell Telephone System, and other domestic and foreign connecting companies. A. T. & T. furnishes only interstate and foreign toll and other services. Tariff schedules are on file with this Commission showing charges of both Chesapeake and A. T. & T. for interstate and foreign telephone communication service to or from the District, including charges of Chesapeake, and of the Chesapeake and Potomac Telephone Companies of Baltimore City and of Virginia, for service between points

within the territory in and around the District designated by them in such tariff schedules as the "Washington Metropolitan Area."[2] The latter charges were filed in 1937 by the Chesapeake Companies under protest, this Commission having insisted that such charges be filed with it. [fol. 20] Telephone service to hotels generally, to many apartment houses and clubs, and to their patrons, tenants, and members, respectively, is primarily provided through private branch exchange (hereafter referred to as "P.B.X.") installations, made pursuant to subscription contracts between Chesapeake, on the one hand, and the hotels, apartment houses, and clubs, on the other hand. Telephone instruments connected with the P.B.X. switchboard, termed "extension stations," are located throughout the hotels, apartment houses, and clubs, mostly in their rooms or apartments, but to some extent in their administrative offices, lobbies, or elsewhere in and around their premises, such as in valet shops, drugstores, and the like, for use in connection with service to patrons, tenants, or members. Both calls incoming to, and outgoing from, persons on the premises are handled through the P.B.X. switchboard and the extension stations. These installations are used also for intercommunicating calls wholly within the hotel, apartment house, or club. The P.B.X. switchboards and extension stations are owned, installed, and maintained by Chesapeake. Chesapeake retains title to the P.B.X. switchboard, the extension stations, and associated plant and equipment; and it provides in its tariffs on file with the District Commission against any connections or attachments to facilities or equipment furnished by it when the connection or attachment is not furnished or authorized by it; and that subscribers may not rearrange, disconnect or remove any apparatus or wiring installed by Chesapeake, or permit others to do so, except upon the written consent of Chesapeake. The P.B.X. switchboard operators are employed by the hotel, apartment house, or club, as the case may be, Chesapeake's tariffs on file with the District Commission

[2] Any communication between a point within the District and a point outside the District is either an interstate or a foreign communication under the Communications Act of 1934. (Section 3(e) and 3(f)). All telephone toll service to or from the District is, therefore, interstate or foreign toll service.

for P.B.X. service providing that "all operating at the subscriber's premises must be performed at the expense of the subscriber and must conform with the rules and regulations which the Telephone Company may adopt to maintain a proper standard of service." Installation charges for the P.B.X. equipment, and regular monthly charges for its use, are made by Chesapeake as provided in its tariffs on file with the District Commission. A monthly charge is also made by Chesapeake for each P.B.X. trunk, and for each P.B.X. extension station. The charges for telephone message service which are filed with this Commission by Chesapeake and A. T. & T. apply to calls made from P.B.X. extension stations. In addition to P.B.X. installations, coin-box telephone stations connecting directly with Chesapeake's central offices have been installed by Chesapeake on the premises of many hotels, apartment houses, and clubs for use [fol. 21] by the general public.[3] Calls made through such stations are charged for at the regular tariff charges.[4] A

[3] Chesapeake alleges that it "has systematically endeavored to install * * * [public] telephones in public rooms of all the larger hotels in the City of Washington and has accomplished this at all except four hotels where permission could not be secured."

[4] The only "commissions" paid by respondents to hotels, apartment houses and clubs in the District are those paid under standard form contracts for the installation of such coin-box telephone stations when they are classified as "public telephones." These commissions range from 10 to 20%, depending on the daily average receipts, and are paid to the occupant of any premises where "public telephone stations" are installed, as compensation chiefly for the space used. In this connection, it may be observed that in its tariffs on file with the District Commission, Chesapeake classifies its coin-box telephones into two types: "public" and "semi-public." Chesapeake provides in its tariffs that "public telephones" are "installed for the use of the general public and any use by occupants of the premises on which they are located is incidental to their principal purpose;" and that " 'semi-public telephone service' is a form of exchange service designed for a combination of subscriber and public use at locations more or less public in character." The latter type of service is furnished "only where, in addition to subscriber use, there is a requirement

few hotels in the District have also had telephone stations extended from their P.B.X. switchboards, and located in their lobbies for public use. Some of these lobby extension stations are coin-box stations. Some are not, however, and these are attended by a hotel employee, through whom any call must be placed.

The tariff charges and regulations which apply to telephone installations and services in hotels, apartment houses and clubs are generally the same as those applicable to such installations and services for others. There are, however, two principal exceptions. One is a tariff regulation concerning the charges which hotels, apartment houses, clubs and similar institutions may make in certain cases. This regulation was prescribed by the Postmaster General during the period of Federal operation of telephone service at the time of the First World War, and was continued in the tariffs of Chesapeake on file with the District Commission by direction of that Commission in 1920. It reads as follows:

[fol. 22] "Hotels, apartment houses, clubs, and similar institutions shall not charge any guest, tenant or member for telephone messages from stations accessible to the general public or to guests, tenants or members generally, an amount in excess of that charged for such service at the public telephone stations in the same exchange."[5]

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for service by persons other than the subscriber, his employees or representatives, but where, in the opinion of the Telephone Company, public telephone service is not justified." The subscriber for semi-public service pays a fixed rate for a minimum number of calls per month, plus 5¢ for each additional local message in excess of such minimum. He receives no commission from the Telephone Company. The user of semi-public stations pays the same charges as at a public station.

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[5] The Postmaster General's original order on this matter, dated November 18, 1918, was not limited to "messages from stations accessible to the general public or to guests, tenants or members generally," this limitation being included by an amending order dated April 25, 1919.

This provision apparently would not apply to telephone service furnished in guest rooms or apartments, as distinguished from places in the hotel, apartment house, or club where extension stations are located accessible to the general public. The other principal exception to the general similarity of tariff provisions for hotels, apartment houses, and clubs with those for others relates to the liability for uncollected telephone charges. The tariffs of Chesapeake on file with the District Commission contain a general regulation that "the subscriber assumes responsibility for all charges for local messages and toll messages sent from the subscriber's station and for toll messages received at such station on which the charges are reversed with the consent of the person called." In June, 1941, however, Chesapeake included a provision in its tariffs on file with the District Commission for the purpose, as stated by respondents, "of relieving the hotel of payment of a charge for telephone service used by a transient guest when the guest has left the hotel without paying his hotel bill and when the charge cannot be collected from the guest." This tariff regulation provides that "a subscriber catering principally to transients and licensed to operate as a hotel shall collect for, and remit to the Telephone Company, its charges incurred by such transients for local and toll messages."

A person residing in a hotel, apartment house, or club may have telephone service provided under a subscription contract made directly with Chesapeake, in which case the telephone station is connected directly with a Chesapeake Central office. Under Chesapeake's rates and regulations, residence rates would apply to such service, assuming the service is confined to non-business use. Business rates only, [fol. 23] however, apply to P.B.X. service, so such service is "measured" or message rate service.[6] Since P.B.X.

[6] "Message rate" service is a classification of exchange service under which a subscriber pays a stipulated monthly charge which permits use of the telephone for a specified number of messages within an exchange, with per message charges being made for each message within such exchange in excess of the specified number. This is to be distinguished from "flat rate" service, which is a classification of exchange service under which a subscriber pays a stipulated monthly charge which permits use of the telephone for messages within an exchange without any express limitation in number.

service is measured service, its use is not restricted to the subscriber and the subscriber's agents and representatives, as is the case for non-measured service, under Chesapeake's tariff regulations.

Hotels and clubs in the District generally collect from users special charges, or "surcharges," specifically for and in connection with interstate and foreign telephone calls through P.B.X. extension stations located on their premises, in addition to the charges for interstate and foreign telephone message service stated in the applicable tariffs filed with this Commission.[7] These surcharges are regarded by the hotels and clubs as "service charges," imposed because of the various secretarial and hotel services they perform for their patrons, tenants, and members, respectively, in connection with telephone calls. These services are described as including the routine handling of telephone calls through the P.B.X. switchboard, which calls may be either incoming, outgoing, or intercommunicating between stations on the premises; recording charges for outside calls so that such charges may be collected from the calling party; taking of messages when patron, tenant, or member is out; paging persons who are called; calling patrons, tenants, or members to awaken them; and other more or less similar services which are related in some way to the use of the telephone. There is little uniformity among the hotels and clubs as to the amount of the surcharges collected and the amounts collected by them are determined only at their own discretion. The surcharges ordinarily are graduated in amount according to a scale based on the amount consisting of the tariff charge for the call and the Federal excise tax. The surcharges range from a minimum of five cents to ten per cent of the total of the tariff charge and the Federal excise tax, plus five cents, with or without a maximum. To illustrate, one large hotel in the District collects surcharges on outgoing prepaid interstate and foreign telephone toll calls of 10 per cent of the total of the tariff charge and the Federal excise tax, with a minimum surcharge of five cents and a maximum of $2.00; on a toll call where the

[7] Hotels in the District generally collect ten cents for each local outgoing call made from P.B.X. extension stations on their premises. Of the two clubs on which there is evidence, one also collects ten cents per local call; the other collects six cents.

tariff charge and the Federal tax totalled $10.00, this hotel would collect $1.00 by way of surcharge.

[fol. 24] On outgoing reversed charge calls, the hotels and clubs collect only a small charge, if any, varying from five to twenty-five cents. On incoming reversed charge calls, however, the hotel or club, in some instances, collects surcharges according to the same scale applied to outgoing prepaid calls. In no case does any hotel or club collect a surcharge on incoming prepaid telephone calls, whether local or toll, although the number of incoming calls is generally more than twice that of outgoing calls. Also, in no case does any hotel or club collect a charge specifically for an intra-hotel or an intra-club telephone call.

So far as the record shows, no apartment house in the District collects any surcharge specifically for interstate and foreign telephone calls, although evidence was not adduced for the record on this point with respect to every apartment house in the District. The existence of P.B.X. switchboards and extension stations in many apartment houses in the District, however, makes possible the collection of such surcharges.[8]

The principal issue presented is whether, under the Communications Act of 1934, as amended, this Commission has jurisdiction over the surcharges in question. The provisions of the Communications Act of 1934 "apply to all interstate and foreign communication by wire or radio * * *, and to all persons engaged within the United States in such communication * * *" (Section 2 (a)), with certain specific exceptions. "Communication" is broadly defined in the Act, and, as so defined, includes not only the transmission involved in interstate and foreign communication service but "all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) inci-

[8] The evidence presented for the record shows that it is the general practice of apartment houses where telephone service is provided through P.B.X. extension stations to collect a regular monthly charge from the tenant ranging from 75¢ to $1.25, plus 25¢ a month for each telephone directory listing (which is the amount of Chesapeake's tariff charge for additional directory listings), plus a charge of 5¢ per outgoing local call.

dental to such transmission" (Sections 3(a) and 3 (b)). The Act also provides in broad language that "all charges, practices, classifications, and regulations for and in connection with * * * [interstate or foreign] communication service, shall be just and reasonable, and any such charge, practice, classification or regulation that is unjust and unreasonable is hereby declared to be unlawful." (Section 201(b)). The service provided through the P.B.X. switchboard and the extension stations in the making of interstate and foreign telephone calls is an integral part of the interstate and foreign communication service covered by the Communications Act of 1934. Regardless of any contractual relations which may exist between the respondents and the subscribing hotel, apartment house, or club, the service provided by respondents to users making interstate and foreign calls through P.B.X. extension stations plainly does not begin or end at the P.B.X. switchboard but begins or ends at the extension station where the user makes and receives his calls. The service provided through the P.B.X. switchboard and extension stations to users of the extension stations other than the subscribing hotels, apartment houses, or clubs themselves, in originating and terminating interstate and foreign tele-
[fol. 25] phone calls, is a service plainly within the contemplation of respondents. As previously found, such service is measured service, and no restriction is imposed by respondents on its use by parties other than the immediate subscriber. In short, where there is a P.B.X. switchboard installation with associated extension stations, respondents expect that telephone calls will be handled to or from such extension stations, and that the calls will be made or received by parties other than the subscriber for the installation.

The respondents and the Hotel Association contend that the surcharges are not charges for telephone service, but that they are for secretarial and hotel services. Thus, the Hotel Association argues that "there is no offering by the hotels of telephone service to their guests and to the extent that charges are made against guests incident to telephone calls made from private guest rooms, the fact is that the telephone call is merely a convenient and logical vehicle for charging for secretarial and hotel service rendered in connection with or arising out of the use of telephones."

The Hotel Association recognizes "a difference between calls from private guest rooms and calls made over lobby telephones connected through hotel switchboards," but contends that "even as to the latter, there are many services and accommodations provided by the hotel in addition to the telephone service rendered by the telephone company."

These contentions, however, do not dispose of the facts that the surcharges in question are charges imposed only against the users of telephone service, that they are imposed only when telephone service is used, and that they are a specific part of the charge made to the users of telephone service for such use. In other words, the surcharges are, for all practical purposes, collected for the use of telephone service, regardless of what motives may impel the hotels, apartment houses, or clubs to collect such surcharges. If the collection of such surcharges were not subjected to regulatory control, a subscriber, or anyone else other than the telephone company, who is permitted by the telephone company to control access to the use of a telephone, could freely resell interstate and foreign telephone service, imposing any charges of his own on such use. This would mean at least a partial nullification of effective public regulation of charges for interstate and foreign communication service, for there would then be a serious hiatus in the safeguards against excessive and discriminatory charges to the using public. A hiatus of this nature would be squarely contrary to the intention evidenced in the Communications Act of 1934 that there be comprehensive regulation of charges for interstate and foreign communication service.[9] (See footnote on page 11.)

[fol. 26] [9] This proceeding did not put in issue the justness and reasonableness of the surcharges, but it may be observed that the amounts of the surcharges which may be imposed on a user of toll service, the wide variations in the surcharges imposed by the various hotels, and the general imposition of surcharges on outgoing calls while incoming calls are usually free of any surcharge, raise serious questions as to the possible existence of charges unjust and unreasonable in amount and discriminatory in application. Also, as has been found, some hotels in the District have placed P.B.X. extension stations in their public lobbies, and thereby

We find that the surcharges in question are charges for and in connection with telephone communication service. The Commission has jurisdiction under the Communications Act of 1934, as amended, to regulate the charges for all interstate and foreign communication service, with certain exceptions not applicable here. We further find that insofar as the surcharges are collected from users for and in connection with the use of interstate or foreign communication service covered by the Act, they are charges over which this Commission has regulatory jurisdiction under the Act.[10] (See footnote on page 11.)

[fol. 27] The further question is presented as to the fixing of responsibility for the surcharges. Three possibilities

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collect the same surcharges from the general public as are imposed on guests using extension stations in their rooms. In contrast, at the Washington Union Station, on premises leased from the Union Station, and at a public office at 14th and F Sts., N. W., Chesapeake maintains public telephone stations with its own operators in attendance to place all calls, and the same charges are made by it as for calls from any of its unattended public coin-box stations.

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[10] It is of interest to note that courts and other commissions which have considered the problem of surcharges similar to those in question here have concluded that such surcharges are subject to regulation by the public utility commission as part of the regulation of public utility telephone service. *Hotel Pfister Inc.* v. *Wisconsin Telephone Co.*, 203 Wis. 20, 233 N. W. 617 (1930); *People ex rel. Public Service Commission* v. *New York Telephone Co.*, 262 App. Div. 440, 29 N. Y. S. (2d) 513 (1942), affd. 287 N. Y. 259, 40 N. E. (2d) 1020; *Connolly* v. *Burleson*, P.U.R. 1920 C, 243 (N. Y.); *Re New York Telephone Company*, 26 P.U.R. (N. S.) 311 (1938) 30 P.U.R. (N. S.) 350 (1939) (N. Y.); *Hotel Pfister Inc.* v. *Wisconsin Telephone Company*, P.U.R. 1932, B. 8, P.U.R. 1933 C, 479 (Wis.); *Hotel Sherman Company v. Chicago Telephone Company*, P.U.R. 1915 F, 776 (Ill.); *Re Hotel Telephone Service and Rates* P.U.R. 1919 A, 190 (Mass.); *Re Hotel Marion Company*, P.U.R. 1920 D, 466, (Ark.); *Jefferson Hotel Co.* v. *Southwestern Bell Telephone Company*, 15 P.U.R. (N. S.) 265 (Mo.)

are suggested by the provisions of the Communications Act; namely, (1) that the surcharges are charges of respondents, on the ground that the hotels, apartment houses, and clubs are agents of the respondents so far as the collection of surcharges is concerned; (2) that the hotels, apartment houses, and clubs which collect surcharges are "connecting carriers" of respondents, being engaged as common carriers for hire in interstate and foreign telephone communication service by wire, within the meaning of Sections 2 (b)(2), 3(h) and 3(n) of the Communications Act; or (3) that the hotels, apartment houses, and clubs, as subscribers to respondents' telephone service, receive such service subject to such tariff provisions as may apply. Whichever one of these possibilities is found to exist in the present case. Section 203(a) of the Communications Act is sufficiently broad in its terms to authorize the requirement by this Commission that a tariff schedule be filed with it by the respondent telephone carriers showing the surcharges collected for and in connection with interstate and foreign telephone communications covered by the Act.[11] Section 203(a) states that such schedules shall be filed by

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[11] Section 203(a) provides as follows:

> "Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this Act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such

[fol. 28] the common carrier "for itself and its connecting carriers." Thus, if it be found that the surcharges are charges of the respondent telephone companies, collected by the hotels, apartment houses, and clubs as "agents" for the respondents, so that the surcharges would be charges of the common carrier "for itself," or if it be found that the hotels, apartment houses, and clubs are "connecting carriers" participating with respondents in the rendition of the service with respect to which the surcharges are collected, it is clear from Section 203(a) that the respondents can be required to file the proper tariff schedules. Although respondents concede that the collection of surcharges can and should be controlled, and indicate that they would comply with the direction of the Commission on this matter, they oppose placing such control on the basis of "agency" or "connecting carriers." Respondents urge instead that this matter be regulated by means of a tariff regulation which specified the conditions upon which interstate and foreign message toll telephone service was furnished by respondents to hotels, apartment houses, and clubs. Such a tariff regulation would be included by respondents in their tariffs for such service on file with the Commission. Such a tariff regulation might provide, for example, that message toll telephone service is furnished by the telephone companies to hotels, apartment houses, and clubs upon the condition that no charges shall be collected for or in connection with the use of such service except the message toll telephone charges stated in the applicable tariffs of respondents to be payable by all users of message toll telephone.

We find that the hotels, apartment houses, and clubs in the District which collect surcharges with respect to interstate and foreign telephone service for which respondents have filed tariffs with the Commission are agents of the

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schedules open for inspection in such public places as the Commission may require."

Section 203(c) provides, in part, as follows:

"No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communications unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder * * *"

respondents. Respondents have undertaken, under the provisions of the Communications Act and their filed tariffs, to furnish interstate and foreign telephone communication service to users in the District, and that undertaking must be accompanied by the responsibility of protecting the users against any charge for or in connection with such service [fol. 29] that is unjustly and unreasonably discriminatory, or otherwise unjust and unreasonable. If the users are to be protected, this responsibility cannot be avoided by respondents on the ground that the surcharges have been fixed, collected, and retained, by the hotels, apartment houses, and clubs. We therefore find and conclude that under the provisions of the Communications Act, the surcharges in question are charges for and in connection with telephone communication service, and that, as such, if they are to be collected at all, they must be properly shown in effective tariffs filed by respondents with this Commission.

We are not now making any finding as to the second possibility stated above, that the hotels, apartment houses, and clubs may have the status of "connecting carriers" under the Communications Act. As for the third possibility, although the Commission has found and concluded that the hotels, apartment houses, and clubs are agents of respondents, the Commission is also of the opinion that a permissible alternative means of regulation of this matter is a tariff regulation specifying proper conditions upon which service is provided by respondents to hotels, apartment houses, and clubs. Regardless of the agency relationship found to exist, each hotel, apartment house, and club receives P.B.X. service as a subscriber, and as such, it can receive the service only subject to such proper tariff conditions as are attached. The respondents are, of course, fully responsible under the Communications Act for compliance with the provisions of such a tariff regulation. We cannot now prescribe the provisions of such a tariff regulation, since the order instituting this proceeding and the record herein were directed to the question of jurisdiction and of the form of tariff to be filed, if any. The tariff regulation which may be filed by respondents to cover this matter should be just and reasonable, and not unjustly or unreasonably discriminatory or otherwise unlawful. If the tariff regulation filed is not satisfactory, we will then consider further procedure for the determination of a proper one.

It should be made clear that we do not intend, by anything said herein, to sanction in any way the collection of any surcharge for or in connection with interstate or foreign telephone communications. Whether surcharges of the type here in question are unlawful under the provisions of the Communications Act, as unjust and unreasonable charges, or unjustly or unreasonably discriminatory, preferential or advantageous charges, is left for future determination by the Commission.

It has been hereinabove observed that respondents raised two additional issues, subsidiary in character to the main jurisdictional issue, which were predicated on the provi- [fol. 30] sions of Section 221(b) of the Communications Act of 1934, as amended.[12] The first of these two issues may be briefly stated as whether the service of connection between the telephone station and the toll switchboard is "wire telephone exchange service," so that any surcharges collected with respect thereto are excluded from this Commission's jurisdiction by Section 221(b) of the Communications Act. This issue grew out of the position of the respondents that their charges for message toll telephone service were stated on the so-called "board-to-board" basis,

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[12] Section 221(b) provides as follows:

> "Nothing in this Act shall be construed to apply, or to give the Commission jurisdiction, with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with wire telephone exchange service, even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority."

Telephone Exchange Service is defined in Section 3(r) of the Act as follows:

> " 'Telephone Exchange Service' means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge."

under which it was claimed that the exchange rates paid by users in the District have included payment for access to the toll switchboard on toll calls, while toll rates have covered the service between the toll switchboards at points of origin and destination of a toll call. Under this view, "toll service" is regarded as the service between these toll switchboards, and "exchange service" as the service between the toll switchboard and the telephone instrument or "station." Effective February 1, 1943, the respondents herein and the other Bell System telephone companies filed with this Commission the following tariff provision, applicable to all their interstate and foreign telephone toll service:

> "The toll service charges specified in this Tariff are in payment for all service furnished between the calling and called telephones."

In view of this tariff filing, respondents have stated that they withdraw the jurisdictional issue raised by them with respect to their "board-to-board" basis of stating toll rates, and this issue requires no further consideration herein.

[fol. 31] The second of the two subsidiary issues raised by the respondent telephone companies on the basis of Section 221(b) of the Communications Act of 1934 relates to the matter of jurisdiction over surcharges collected with respect to interstate interzone calls between stations in the District and stations outside the District but within the so-called "Washington Metropolitan Area." There was no intention on the part of this Commission to raise this issue when the present proceeding was instituted. This Commission was concerned only with surcharges collected from the public in addition to charges stated in filed tariffs. Although such tariffs were filed under protest, respondent Chesapeake and the other two Chesapeake companies have had, at the direction of this Commission, effective tariffs on file with this Commission since they set up the "Washington Metropolitan Area," showing charges applicable to interstate interzone calls within that area. Only a little more than one per cent of the total calls within the "Washington Metropolitan Area" are calls to which interstate interzone message charges apply. For the above reasons, it was not anticipated that the jurisdictional issue as to interstate interzone calls would be

pressed in this proceeding and, although the proceeding has been conducted cooperatively with the District Commission, and the National Association of Railroad and Utilities Commissioners, which includes the Maryland and Virginia Commissions in its membership, entered an appearance herein, it was not believed necessary to give formal notice directly to the Virginia and Maryland Commissions. The respondent telephone companies proceeded, however, with evidence on this issue, and there was cross-examination of their witnesses. A copy of this Commission's Proposed Report on this aspect of the case, identified as Report No. 2 (P-29-2), based on the record thus made, was served on Commissions in its membership, entered an appearance the Virginia and Maryland Commissions, as well as the N.A.R.U.C. The N.A.R.U.C. and the Maryland Commission complained that they had no formal notice of this issue, and therefore there was no opportunity for the Maryland and Virginia Commissions, or the State Commission generally, to present evidence on the issue. The N.A.R.U.C., the Maryland Commission, and the Southeastern Association of Railroad and Utilities Commissioners (of which the Virginia Commission is a member), have also opposed the conclusion stated in the Proposed Report concerning this issue. The N.A.R.U.C. has further urged strongly that, under the circumstances, this issue not be determined in this proceeding.

At the oral argument herein, the respondent telephone companies took the position that if the Commission should conclude that it had jurisdiction over surcharges as such, they would not contest the application of such conclusion to surcharges collected with respect to calls to which interstate interzone message charges applied, provided such action was without prejudice to their position that this Commission had no jurisdiction over interstate interzone calls within the "Washington Metropolitan Area." This position of the respondents enables the Commission to confine its decision herein to the main issue of jurisdiction over surcharges, and to eliminate an issue which, as a practical matter, is extraneous to the main issue herein. Our decision herein as to our jurisdiction over surcharges is therefore intended to apply to surcharges collected in the [fol. 32] District on all interstate interzone telephone calls covered by tariffs on file with us. It is understood, how-

ever, that this decision is without prejudice to any claim by the respondent telephone companies or by the District Commission or any state regulatory authority that this Commission is without jurisdiction over interstate interzone calls.

The further contention is advanced, principally by the Hotel Association of Washington, D. C., Inc., and by the Building Owners and Managers Association of Washington, D. C., that this Commission has no jurisdiction over the surcharges in question because the subject matter is controlled by the District of Columbia Emergency Rent Act (Public Law 327, 77th Congress, approved December 2, 1941).[13] It is argued that by such Act, "Congress placed in one agency (the Rent Administrator) all control over housing accommodations in the District of Columbia, including all services in connection therewith and all charges therefor."[14] We are unable, however, to find in the District Rent Act any basis for the conclusion that the traditional comprehensive powers of regulation of public utility telephone service which were vested in this Commission by the Communication Act of 1934 have been transferred by Congress to the District Rent Administrator. Certainly no specific provision for such transfer of authority is contained in the District Rent Act. As we have found, the Commission is concerned here with a charge to the public for and in connection with a public utility telephone communication service. The District Rent Act, however, is obviously intended

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[13] It is provided in the District Rent Act that it is to terminate on December 31, 1945.

[14] The Administrator of Rent Control for the District appeared at the opening of the hearings herein and stated that his contention "is very much along the same line" as that of the Hotel Association, "that this matter has been taken care of by an Act of Congress, and we have jurisdiction of that service." The Administrator did not participate in the hearings, and has filed no brief or other statement herein. Respondents in their brief only noted that "the question of jurisdiction under the Rent Control Act remains as one of the issues to be decided," and express the wish "to reserve the privilege of expressing our views on it hereafter, if so advised."

to deal with the landlord-tenant relationship and its incidents, not with the regulation of public utility telephone service and the charges for and in connection with such service. In the argument on behalf of the Hotel Association, reference is made to the definitions of the terms "housing accommodations" and "service" in paragraphs (a) and (b), respectively, of Section 11 of the District Rent Act. The definition of "housing accommodations" is so stated as to include "all services supplied in connection with the use or occupancy of such property" (i. e., "property rented or offered for rent for living or dwelling purposes in the District of Columbia"), and the term "services" is defined to include the furnishing of "telephone" service, in addition to the furnishing of light, heat, etc. But the function of those definitions, as we read the [fol. 33] District Rent Act, is to prevent a landlord from increasing the rent charged the tenant by him, or decreasing the amount of service which he provides the tenant, unless proper authorization is received from the Rent Administrator. We do not construe the effect of these provisions to be that the Rent Administrator is now empowered to determine what charges may be made for public utility services, or what services should be provided by a public utility.

Conclusions

We are of the opinion and we find and conclude;

(1) All charges for and in connection with interstate and foreign telephone communications between telephone stations within the District of Columbia and telephone stations outside the District, except charges for or in connection with wire telephone exchange service, are subject to the provisions of the Communications Act of 1934, as amended, and are within the jurisdiction of the Commission thereunder; and all such charges shall be shown in tariff schedules filed with this Commission, if they are to be collected.

(2) All charges collected by hotels, apartment houses, or clubs for and in connection with interstate and foreign telephone communications, for which communications effective tariff schedules of respondents are presently on file with this Commission, are subject to the provisions of the Communications Act of 1934, as amended, and are within

the jurisdiction of the Commission thereunder; and respondents American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company shall file with this Commission tariff schedules which are just and reasonable, not unjustly or unreasonably discriminatory or otherwise unlawful, showing all such charges.

(3) The tariff schedules which the Commission hereby concludes shall be filed may consist of a tariff regulation which is just and reasonable, not unjustly or unreasonably discriminatory, or otherwise unlawful, which contains specific provisions with respect to the conditions upon which telephone service under tariffs on file with this Commission is furnished by the respondent telephone companies to the hotels, apartment houses and clubs.

(4) Insofar as tariff schedules filed with this Commission pursuant to this Report and the Order entered herewith are applicable to interstate telephone communication within the so-called "Washington Metropolitan Area," such filing shall be without prejudice to questioning by respondents, by the District Commission, or by any state regulatory [fol. 34] agency, in any other proceeding of the existence of jurisdiction in this Commission over such communications.

An appropriate Order shall issue.

Federal Communications Commission

T. J. Slowie, Secretary.

Adopted December 10, 1943.
Released Dec. 11, 1943.

[fol. 35] EXHIBIT 3 TO COMPLAINT

72321-2

Before the Federal Communications Commission, Washington 25, D. C.

Docket No. 6255, P-29

In the Matter of Special Telephone Charges of Hotels, Apartment Houses, and Clubs, on Interstate and Foreign Telephone Communications

Order

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 10th day of December, 1943;

The Commission, having under consideration the record of the proceeding herein, including the two Proposed Reports (P-29-1 and P-29-2) dated May 18, 1943, and the Exceptions and Arguments filed with respect thereto; and having also under consideration its Report entered herein this day;

It is ordered, that the Report of the Commission entered herein this day be, and it is hereby made a part hereof by reference;

It is further ordered, that respondents American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company shall file tariff schedules with this Commission which are just, reasonable, not unjustly or unreasonably discriminatory, or otherwise unlawful, which shall show all charges collected by hotels, apartment houses and clubs in the District of Columbia for and in connection with interstate and foreign telephone communications, for which communications effective tariff schedules of respondents are presently on file with this Commission;

It is further ordered, that such tariff schedules as are required by this Order to be filed, may consist of a tariff regulation which is just and reasonable, not unjustly or unreasonably discriminatory, or otherwise unlawful, which contains specific provisions with respect to the conditions upon which telephone service under tariffs on file with this Commission is furnished by respondent telephone companies to the hotels, apartment houses, and clubs;

[fol. 36] It is further ordered, that this Order shall be effective on the 15th day of January, 1944, and that such tariff schedules as are required by this order to be filed shall be filed on or before that date, to be effective on the 15th day of February, 1944.

By the Commission,

T. J. Slowie, Secretary.

[fols. 37-47] EXHIBIT 4 TO COMPLAINT

Tariff F. C. C. No. 3. Original Page 11A

The Chesapeake and Potomac Telephone Company

Message Toll Telephone Service

B. General Regulations (Cont'd)

14. *Service Furnished to Hotels, Apartment Houses and Clubs* (N)(1)

Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff. (N)(1)

Issued: January 22, 1944. Effective: February 22, 1944

(1) Effective February 15, 1944 in compliance with Orders of the Federal Communications Commission in Docket No. 6255.

By D. E. McCoy, General Commercial Manager, 725 13th Street, N. W., Washington, D. C.

[fol. 48] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER & ROBERT O. SCHOLZ, WASHINGTON PROPERTIES, INC., THE CARROLL ARMS HOTEL, INC., COMMODORE HOTEL CORPORATION, WASHINGTON HOTEL COMPANY, DODGE HOTEL CORPORATION, JAMES S. GORE, HAMILTON REALTY CORPORATION, HARRINGTON HOTEL COMPANY, INC., HAY ADAMS CORPORATION, THE LAFAYETTE, INC., THE LEE SHERATON CORPORATION, LINWOOD HOTEL CORPORATION, MAYFLOWER HOTEL CORPORATION, NEW COLONIAL HOTEL, INC., LAWRENCE GASSENHEIMER, ROBERT D. BLACKISTONE, THE RALEIGH HOTEL COMPANY, OSCAR A. DELIMA & EDWIN A. DELIMA, SHOREHAM HOTEL CORPORATION, HOTEL STATLER COMPANY, INC., TWENTY-FOUR HUNDRED SIXTEENTH STREET, INC., WASHINGTON PROPERTIES, INC., TEXWASH CORPORATION, THE WILLARD, INC.—Filed February 28, 1944

For their answer to the complaint in the above-entitled proceeding, the defendants above named, on information and belief, say:

1. They admit the allegations of paragraphs 1, 2 and 3 of the complaint.

2. Answering paragraph 4 of the complaint, they admit that they are hotel companies and are either individuals, partnerships or corporations, that their names and addresses are as shown in paragraph 4 of the complaint, and that they are members of the Hotel Association of Washington, D. C., Inc., a corporation, but they deny that they are properly parties defendants pursuant to the provisions of Section 411 (a) of the Communications Act of 1934 (47 U. S. C., Sec. 411(a)).

3. Answering paragraph 5 of the complaint, they admit [fol. 49] that this action is brought pursuant to the provisions of Section 401(c) of the Communications Act of 1934, as amended, but deny that there has been or is any violation by them of Section 203 of said Act, and except as expressly admitted, deny the allegations of said paragraph 5.

4. They have no knowledge or information sufficient to admit or deny the allegations of paragraph 6.

5. They make no answer to paragraph 7 of the complaint, which states conclusions of law requiring no answer.

6. They admit the allegations of paragraph 8 and 9 of the complaint.

7. They make no answer to paragraphs 10 and 11 of the complaint, which state conclusions of law and require no answer.

8. Answering the allegations of paragraph 12 of the complaint, they admit that as a part of their hotel service to their guests they have installed or arranged for the installation of telephone instruments in hotel rooms and for the connection of such instruments with the PBX switchboards, and that calls incoming to and outgoing from persons on their hotel premises are handled through such PBX switchboards, and they allege that as a part of their hotel services they have employed operators to place such outgoing calls, to receive incoming calls for their guests, to make connection between PBX switchboards and telephone instruments in their hotel rooms, and to render various other hotel and secretarial services. They admit that these installations are also used for intercommunicating calls wholly within the hotel. They admit that the PBX switchboards and extension stations are owned and were installed and maintained by defendant, The Chesapeake and Potomac Telephone Company, which retains title thereto, but they allege that they pay rental therefor and that they pay for their installation. They admit that defendant The Chesapeake and Potomac Telephone Company provides in its tariffs on file with the Public Utilities Commission of the District of Columbia rules and regulations substantially as alleged in the last sentence of said paragraph 12. They [fol. 50] allege that by said rules and regulations of defendant The Chesapeake and Potomac Telephone Company they are compelled, in providing, as part of their hotel service, facilities for their guests to make and receive telephone calls in their rooms, to use only instruments and connections procured from defendant telephone company, and they are prevented from buying or owning said instruments or

from procuring instruments and connections from other sources. Except as expressly admitted they deny the allegations of paragraph 12 of the complaint.

9. Answering paragraph 13 of the complaint, they admit the allegations of the first three sentences thereof, except that they refer to the tariff schedules of The Chesapeake and Potomac Telephone Company on file with the Public Utilities Commission of the District of Columbia and the Federal Communications Commission for a complete and accurate statement of the provisions contained therein. Answering the last sentence of paragraph 13 of the complaint, they admit that the charges for interstate and foreign telephone communications which are filed with the Federal Communications Commission by the defendant telephone companies apply to the transmission to or from the PBX switchboards installed in the premises of these defendants, all such communications in the receipt and making of which guests use instruments located in rooms on such premises, but they deny that such charges apply to the handling of such messages between PBX switchboards and such instruments and deny that such charges apply to or include compensation for the hotel services of these defendants for which their service charges are made.

10. They admit the allegations of paragraph 14 of the complaint except that for a complete and accurate statement of the provisions of the effective tariffs of the defendant The Chesapeake and Potomac Telephone Company they refer to said tariffs on file with the Public Utilities Commission of the District of Columbia and with the Federal Communications Commission.

[fol. 51] 11. Answering paragraph 15, they refer to the tariffs of defendant The Chesapeake and Potomac Telephone Company on file with the Public Utilities Commission of the District of Columbia for a complete and accurate statement of the provisions thereof, and they deny knowledge whether a provision included in its tariff in June, 1941 was for the purpose stated in said paragraph 15.

12. Answering paragraph 16 of the complaint, they admit that defendant The Chesapeake and Potomac Telephone Company has on file with the Commission tariff schedules concurred in by defendant American Telephone and Tele-

graph Company, which show charges and classifications, practices and regulations affecting such charges for interstate and foreign message toll telephone communication service. They admit that for their various hotel services described in paragraph 8 herein they have made and make service charges to their guests, but they deny that such service charges were for telephone communication service within the application of the Communications Act of 1934, as amended, or subject to the jurisdiction of the Communications Commission, and they deny that they have, or that any of them has, charged, demanded, collected or received for such telephone communication service to guests or others at their respective hotels an extra charge designated as a surcharge or service charge, in addition to the charges specified in the effective and applicable telephone schedules of defendant telephone companies.

13. Answering paragraph 17 of the complaint, they admit that by an order dated January 16, 1942, in its Docket No. 6255, the Commission instituted an investigation and they refer to the terms of said order for a definition of the purpose and scope of said investigation.

14. They admit the allegations in paragraph 18 of the complaint, but make reference to the order for a true and correct statement of its terms.

15. They admit the allegations of paragraph 19.

[fol. 52] 16. Answering the allegations of paragraph 20 of the complaint, they admit that a hearing and oral argument were had but deny that defendant hotel companies participated therein. They admit that the Commission issued its report and make reference to the report for a complete and accurate statement of its contents and of the findings and conclusions of the Commission.

17. They admit the allegations of paragraphs 21, 22, and 23 of the complaint.

18. Answering the allegations of paragraph 24 of the complaint, they admit that defendant telephone companies have tendered to them contracts not provided for in and not in accordance with any filed tariffs of said defendants, which contracts purport to provide for the payment of a commission of 15 per cent of the amounts paid to defendant

telephone companies by each of these defendants for interstate and foreign toll telephone messages sent paid or received collect by the guests of their hotels through the use of telephone instruments installed in hotel rooms and connected with their PBX switchboards, but alleged that said contracts would provide for no commission in connection with messages sent collect or received prepaid, and they allege further that said contracts so tendered would be terminable upon ten days notice, and they allege further that the service charges made by these defendants were for hotel services, and, except as expressly admitted, deny the allegations of said paragraph 24.

19. They deny each and every allegation of paragraphs 25 and 26 of the complaint.

First Separate and Complete Defense

20. As and for a first separate and complete defense to the complaint, these defendants allege that they are severally engaged in the business of owning and/or operating hotels; that any and all services which they render to their guests are hotel services and are rendered by them as hotels [fol. 53] and subject to local ordinances and statutes applicable to hotels, and that their charges therefor are not subject to the provisions of the Communications Act of 1934, as amended, or to the jurisdiction of the Federal Communications Commission and cannot in any way be regulated or affected by any tariffs filed by or on behalf of defendant telephone companies with said Commission.

Second Separate and Complete Defense

21. As a second separate and complete defense to the complaint, these defendants allege:

(a) That the tariff provisions of defendant telephone companies set out in paragraph 23 of the complaint are unjust and unreasonable regulations and provide for unjust and unreasonable practices in violation of Section 201 (b) of the Communications Act of 1934, as amended, and that they will cause unjust and unreasonable discrimination in practices, regulations, facilities and services as between these defendants and other

subscribers of telephone services paying the same rates, all in violation of Section 202 (a) of said Act;

(b) That a determination of the foregoing questions is, in the first instance, within the jurisdiction of the Federal Communications Commission and not within the jurisdiction of this Court;

(c) That a complaint raising these issues and alleging that the tariff provisions contained in the tariffs of these defendants and similar provisions contained in tariffs of other telephone companies throughout the United States are and will be unjust and unreasonable and unjustly and unreasonably discriminatory in viola-
[fol. 54] tion of Sections 201 (b) and 202 (a) of said Act, has been filed and is now pending before the Federa Communications Commission;

(d) That, therefore, this Court is without jurisdiction in the premises.

Third Separate and Complete Defense

22. As and for a third separate and complete defense to the complaint, these defendants allege on information and belief that the tariff provisions set out in paragraph 23 of the complaint were filed in supposed compliance with a decision and order of the Federal Communications Commission in its Docket No. 6255; that the said decision and order were erroneous as a matter of law and without support in the evidence before the Commission, and that a proceeding to set aside and enjoin the enforcement of said decision and order has been instituted pursuant to Section 402(a) of the Communications Act, 1934, as amended, and pursuant to the provisions of the Act of October 22, 1913 (38 Stat. 219) and that such action is now pending in this Court.

Fourth Separate and Complete Defense

23. As and for a fourth separate and complete defense to the complaint, these defendants allege on information and belief that the telephone communication service to which the tariff provision set forth in paragraph 23 of the com-

plaint purports to relate is a wire telephone exchange service within the meaning and application of Section 221(b) of the Communications Act of 1934, as amended; that, therefore, in accordance with such provision, the Act has no application thereto and the Commission is without jurisdiction thereof; that the tariff provision is not properly filed with the Commission and is null and void, and that the Commission is without authority to maintain an action for its enforcement and this Court is without jurisdiction in the premises.

[fol. 55] *Further and Supplemental Answer to the Prayers for a Preliminary Restraining Order and/or a Temporary or Interlocutory Injunction.*

Answering the prayers of the complaint for a preliminary restraining order and/or a temporary or interlocutory injunction, these defendants repeat all of the denials and admissions and allegations above set forth and in addition allege that they have made service charges for their hotel services, described in paragraph 8 of the answer, for many years; that the performance of these services entails very substantial expense, for which they depend on such service charges for reimbursement; that if a temporary restraining order or temporary or interlocutory injunction should be granted restraining them from collecting such service charges pending a final determination herein and if it should be finally determined that they should not be enjoined from collecting such service charges they will have no means of recovering such service charges from their guests who may have left in the meantime and will suffer heavy financial loss, for which they will have no redress; that the amounts of such service charges for each individual guest are small, but that in the aggregate they represent very substantial revenues to these defendants and are no more than are required to reimburse these defendants for the expenses which they would and will be compelled to incur.

Wherefore, these defendants pray that the prayers for a preliminary restraining order and for a temporary or interlocutory injunction may be denied, and that after the hearing of this cause the prayer for a final and permanent injunction be denied, and that the complaint may be dismissed with costs.

[fols. 56-88] And these defendants pray for such other and further relief as in the premises may be proper.

Joseph C. McGarraghy, 1405 K Street, N. W., Washington, D. C. Herbert Brownell, Jr., Parker McCollester, 25 Broadway, New York, N. Y.; Joseph W. Wyatt, Southern Building, Washington, D. C., Attorneys for Defendants 3 to 30.

Wilkes, McGarraghy & Artis, 1405 K Street, N. W., Washington 5, D. C.

Lord, Day & Lord, 25 Broadway, New York 4, N. Y., Southern Building, Washington 5, D. C.

Copy served on counsel for plaintiff February 28, 1944.

Joseph C. McGarraghy, Attorney for defendants 3 to 30.

[fol. 89] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER AMENDING COMPLAINT—Filed February 29, 1944

It is ordered, adjudged, and decreed that the Complaint herein be amended in the following respects:

1. By striking from the sentence immediately after the tabulation in paragraph 4, the words "except the Statler Hotel".

2. By striking from the first sentence of paragraph 20 the words "hotel companies" and substituting in lieu thereof the words "telephone companies".

February 29, 1944.

T. Allan Goldsborough, District Judge.

[fol. 90] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY—Filed March 10, 1944

American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company, defendants in the above-entitled proceeding, answer the Complaint as follows:

First Defense

1. They admit the allegations of paragraphs 1, 2, 3 and 4 of the Complaint.

2. They admit the allegations of paragraph 5 of the Complaint, except that they deny any violation of Section 203 of the Communications Act of 1934 by them.

3. They admit the allegations of paragraph 6 of the Complaint.

4. They make no answer to paragraph 7 of the Complaint, which states conclusions of law requiring no answer.

5. They admit the allegations of paragraphs 8 and 9 of the Complaint.

6. They make no answer to paragraphs 10 and 11 of the Complaint, which states conclusions of law requiring no answer.

[fol. 91] 7. They admit the allegations of paragraph 12 of the Complaint, except that they deny that the Defendant Hotels provide public telephone service to guests or others, and they refer to the tariffs mentioned in said paragraph 12 for a complete and accurate statement of the provisions contained therein.

8. They admit the allegations of paragraphs 13, 14 and 15 of the Complaint, except that they refer to the tariffs mentioned in said paragraphs for a complete and accurate statement of the provisions contained therein.

9. They admit the allegations of the first sentence of paragraph 16. They deny that they or either of them have charged, demanded, collected, or received for interstate or foreign message toll telephone communication service to guests or others at Defendant Hotels any charge, whether designated as a "surcharge" or "service charge", or otherwise, in addition to the charges specified in their effective and applicable tariff schedules, and aver on information and belief that such "surcharges" or "service charges" as may have been collected by Defendant Hotels were for services other than public telephone service.

10. They admit the allegations of paragraphs 17, 18, 19 and 20 of the Complaint, except that they refer to the pleadings, orders, proceedings and records in the investigation of special telephone charges of hotels, apartment houses and clubs before the Federal Communications Commission, Docket No. 6255, for the substance, purport and effect thereof.

11. They admit the allegations of paragraphs 21, 22 and 23 of the Complaint.

12. Answering the allegations of paragraph 24 of the Complaint, they admit that they have offered to pay to [fol. 92] Defendant Hotels a commission of fifteen per cent, upon the tariff charges for interstate and foreign toll messages of guests sent-paid from, or received-collect at, extension telephones in guest rooms connected with the private branch exchange at said hotels and, except as expressly admitted, they deny the allegations of said paragraph 24.

13. Answering the allegations of paragraph 25 of the Complaint, they admit that on and after 12.01 A. M., February 15, 1944, the tariff provision quoted in paragraph 28 of the Complaint has been and is a legally effective tariff provision stating a condition upon which interstate and foreign message toll telephone service is furnished on the premises of the Defendant Hotels.

14. Answering the allegations of paragraph 26 of the Complaint, they deny that they, or either of them, have charged, demanded, collected or received, are charging, demanding, collecting or receiving, or will charge, demand, collect or receive surcharges, service charges or any other charge for or in connection with interstate or foreign mes-

sage toll telephone communications in addition to the message toll telephone charges set forth in their applicable and effective tariff schedules on file with the Federal Communications Commission, and they deny that they are doing anything illegal in the premises.

Second Defense

1. If the Defendant Hotels, or any of them, have collected any charges for or in connection with interstate or foreign message toll telephone communications, other than charges set forth in the applicable and effective tariffs of the defendant telephone companies, such action has been without [fol. 93] the authority, approval or consent of the defendant telephone companies, or either of them. Defendant telephone companies are not responsible for such action, and the hotels, in so acting, are not agents of the telephone companies.

2. Defendant, The Chesapeake and Potomac Telephone Company, has made prompt and diligent efforts to secure compliance by the hotels with the condition contained in the tariff regulation set forth in paragraph 23 of the Complaint.

Third Defense

1. By reason of the matters alleged in the First Defense herein, which are hereby adopted as a part of this Defense, these defendants allege that an order issued by this Court enjoining or restraining them, or either of them, from charging, demanding, collecting or receiving, any charge in addition to the message toll telephone charges set forth in the applicable tariff schedules, as sought in paragraphs 1(a), 2(a) and 3(a) of Plaintiff's prayer for relief, would be inappropriate and inequitable as a means of preventing Defendant Hotels from collecting service charges or surcharges.

2. These defendants further allege that denial of interstate or foreign message toll telephone service to the Defendant Hotels, or any of them, as sought in paragraphs 1(b), 2(b) and 3(b) of Plaintiff's prayer for relief, would be inequitable, in that it would constitute a hardship upon

guests and others using such service at said hotels, and would be contrary to the public interest.

[fols. 94-96] Wherefore, these defendants ask that all relief prayed for in the Complaint against them be denied, and that said Complaint in so far as directed against them be dismissed.

T. Brooke Price, Edmund S. Hawley, R. A. Van Orsdel, C. R. Reynolds, Jr., Attorneys for Defendants, American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company, 725 Thirteenth Street, N. W., Washington, D. C.

March 7, 1944.

[fol. 96a] In United States District Court

Oral Opinion of the Court—Filed August 2, 1944

"In the first place the Court holds that the law and the regulations involved in this case, whereby the Federal Communications Commission was established and acts, are lawful and valid.

The Court holds that this Court has jurisdiction of the subject matter of this case and of the parties, and that the Federal Communications Commission likewise had jurisdiction of the matter of the tariff schedules, and so on, that were made governing the two defendant telephone companies and others engaged in the telephone business.

Now that covers the points of law that have been raised here. The Court holds that any relief along the lines of the tariff schedules, that the hotels here may wish, or that the telephone companies here may wish, should be taken up before the Federal Communications Commission.

Now on the matter of motions to strike out certain testimony, or objections, rather, to the admissibility of certain testimony, the Court rules now that it is not to consider and will not consider in its decision any of the testimony, oral or written, that was offered in this case in regard to a proposed 15 per cent commission to be paid by the telephone companies to the hotels. That was merely an offer. It didn't go so far as to be called an offer of compromise because there is no controversy in regard to money or

charges between the telephone companies and the hotels. It may be a businesslike proposition on the part of the telephone companies to try to help the hotels out, because they are mighty good customers of the telephone companies.

[fol. 96b] But whatever the motive was that prompted it, it wasn't an offer of compromise, and even if it were, the Court shouldn't consider it because it was never carried through; and if it was a generous offer—I doubt whether I could go so far as to say it was—but if it was a businesslike proposition, of if selfish interests were governing the telephone company, whatever it was, it doesn't bear upon the essential issues of law and fact in this case.

Therefore, the Court is not considering any of the evidence, oral or written, that was introduced here in regard to that proposed payment of 15 per cent of the toll charges to the hotel defendants.

Now there has been testimony offered here to show that what the hotels put on the bills of those guests who used the long distance phones was a reasonable charge for secretarial service or hotel service, or whatever else you wish to call it. Well, the Court will not consider or go into the question of whether it is reasonable or unreasonable, because that isn't an issue in this case. Maybe it is most reasonable, and maybe the hotel guest is very well pleased with the amounts that have been charged for the accommodation and services rendered. But that isn't here before me.

I couldn't undertake to say that the hotels are rendering services worth 15 per cent of the charge for long distance calls, and therefore could be able to add that amount to the bills of their guests; I couldn't say that the ten per cent that they are apparently charging is too much or a fair charge or what. So the Court is going to disregard the testimony concerning the reasonableness of this charge, or surcharge, that the hotels are making to their guests for long distance calls. So that is eliminated from the case.

Now although it may not be required of the Court—because the Federal Communications Commission takes [fol. 96c] an alternative position—to pass upon the issue as to whether the hotels are agents of the telephone companies, or whether they are to be regarded as subscribers, I think a Court ought to take a stand on that because that is a vital issue in this case.

With all due respect to the plaintiff in this case, the Government, I think they ought to come into Court on a definite theory and not leave the Court to choose, and the plaintiff say, 'Well, take this and if you don't like it, take that and make it the basis of your decision.'

In the opinion of the Court the testimony in this case actually fails to show that these hotels are the agents of the telephone company. There was no written agreement to that effect introduced here; there was no oral agreement to that effect introduced here; and there is no testimony, written or oral, from which this Court could imply the existence of any agency in the hotels on behalf of or as agent of the telephone company.

In the opinion of this Court the hotels are subscribers. They enter into a contract with the telephone company. 'You render us such and such service and we will pay you such and such money'. They get the bill every month or two and they pay the telephone company—that was the evidence in this case—the amount that they owe them as subscribers for telephone service from the telephone Company.

Now that being so, the telephone companies have no control whatever over what these hotels are doing in regard to this surcharge. But they have knowledge of it. At least, if they didn't have knowledge of it before this case came up, they have knowledge of it today. As a matter of fact the testimony shows that they have had knowledge of it for some time because they have discussed the matter and endeavored to make some settlement of it.

So the telephone companies are charge with what the [fol. 96d] hotels are doing in regard to these surcharges they are making on the bills of their guests for toll or interstate messages.

Now that brings up the question of why we have a Federal Communications Commission. Well, maybe some people wish we didn't have it.

Then the question comes up as to what persons, what property or what purpose this Federal Communications Commission was established for. I take it that without doubt it was established for the benefit of the public, and to protect the public in regard to such matters as those involved in this case. They didn't want to leave the public at the mercy of the telephone companies, having a

monopoly, as one witness undertook to say, or maybe I suggested it to him. But any way, monopoly or no monopoly, this Act and these Regulations and these tariff schedules in regard to telephone messages going out through the states, all have the principal purpose of protecting the public against being overcharged. If we didn't have the Federal Communications Commission, and didn't have the regulations, and didn't have these tariff schedules, the telephone companies could say, if you wanted to talk to John Jones in New York, 'Ten Dollars', or 'Twenty Dollars'. The man calling New York from Washington would say, 'That is too much'. They would say, 'Well, if you think it is too much you can't talk, you can take the train and go up and see him.'

Well, you know such things have been done in the past by corporations, especially by public utilities when they weren't under control.

I have said that because the public are the ones to be primarily protected by this Commission and by the law establishing it, and by the Regulations and Orders that it has made.

If someone who is connected with getting these messages from the person telephoning, to the receiver in New York, [fol. 96e] the person receiving the message, if somebody else who has some connection or part in transmitting those messages undertakes to slap on an extra charge, whether it is 5 per cent, 10 per cent, 20 per cent, or maybe 50 per cent, or it might even be 100 per cent, just doubling it up, if that were permitted it would be negativing in part, or maybe entirely, the purpose of this Commission and the purpose of this law and of the regulations and orders of this Commission, and the public would not be protected in regard to their interstate telephone messages.

Now, that being so, if someone who has gotten telephone facilities as a subscriber, from the telephone company—and they have gotten those facilities for their own benefit, to accomodate their guests in the hotel—undertakes, when the messages are going through, to render services to the guests, and then undertakes to surcharge and make the charge go above, in amount, the tariff schedule, that would be doing indirectly what the telephone company is not allowed to do, and what the law, by its express and implied terms, and by the regulations of this Commission, and its orders, did not mean to allow.

Now under those circumstances I think that the hotels—it isn't for me to say what they should do—but they could render less service because they were not getting paid for it, just like you could put dimmer lights in the rooms of a hotel, instead of 60-watt lights you could put in 40-watt lights—that is up to the individual hotel. They are in competition with one another and they can spend as little or as much as they see fit in trying to get guests and patrons and trying to keep them.

So in this case they don't have to render all the service that they do. And if it is too expensive—they all appear to be pretty well organized here—they can all agree to cut down on the expense where they are losing money. They could do that or they could charge for these services [fol. 96f] separately under some other item, whatever they might wish to call it—secretarial services, accommodation for this or that. Or they could go before the Federal Communications Commission and ask to have *and ask to have* an allowance put in the tariff schedule; or they could go to the Rent Commission and because of the action of this Court—if an injunction is granted could say, 'We should get more rent for our rooms'. Or the hotels could go to the food or the drinks commissions and try to get them to permit a raise in the price of food or drinks.

But that is up to the hotels; they will just have to figure out a way to get the money; and if they can't get it this way they will either have to cut down the service or get it some other way.

Then—of course I needn't suggest it but—if they want to they have the proposition made to them of getting 15 per cent from the telephone company.

As I say, these suggestions I have made are just thoughts, but they don't enter into my decision at all. The hotels have, as I have indicated, a number of possible ways in which they may recoup the losses they say they are sustaining; but the Court isn't concerned with that, that is a worry of the hotels and not of this Court.

Accordingly the Court considers that in this case, while it could enjoin these telephone companies if the facts of the case required, from the facts in this case it appears that the telephone companies are not violating the tariff schedules at all, and therefore there is no remedy that should be granted at this time against the telephone companies for any acts of their own. Since the Court has held that

the hotels are not the agents of the telephone companies, therefore the telephone companies are not responsible for what the hotels are doing now.

But the hotels know what they are doing, and the Court [fol. 96g] holds that they are responsible for what they are doing, and they are making the public pay more for toll charges, or for interstate telephone charges than what the Federal Communications Commission has allowed, and therefore they are violating this tariff schedue of the Federal Communications Commission, they are violating the law, and violating the rules of the Federal Communications Commission, and should be enjoined accordingly.

So the Court will grant an injunction restraining the hotels from adding these surcharges to the bills of the guests of the hotels, in addition to the regular charges for the interstate toll charges.

The Court will further reserve, in this case, jurisdiction of it so that should the hotels refuse to obey the order of this Court, enjoining them from making these charges, and the telephone companies, knowing that they have made these charges and that they are still making them, and that by rendering them phone service they will thereby be aiding and abetting them; and indirectly, maybe; encouraging them to violate the order of this Court and the order of the Federal Communications Commission, then the Court would feel that it would have jurisdiction and authority to enjoin the telephone companies by mandatory injunction, or prohibitive injunction, rather, prohibiting them from rendering any further service to those hotels.

That, I think, covers all the issues in the case.

Counsel can confer together and prepare findings of fact, conclusions of law, and a judgment in the case."

[fol. 97] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Findings of Fact and Conclusions of Law—Filed June 8, 1944

This is a complaint filed by the United States of America against the American Telephone and Telegraph Company,

The Chesapeake and Potomac Telephone Company, and 27 hotel companies doing business in the District of Columbia. This action is brought pursuant to the provisions of Section 401(c) of the Communications Act of 1934, as amended (47 U. S. Code, Sec. 401(c)), to enjoin defendants from violation of Section 203 thereof (47 U. S. Code, Sec. 203). This action was instituted at the direction of the Attorney General of the United States, upon the request of the Federal Communications Commission.

The case was tried before the Judge without a jury.

Findings of Fact

1. The defendants American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company are common carriers engaged in interstate and foreign telephone communication by wire and radio. Each of the defendant telephone companies is a corporation organized and existing under and by virtue of the laws of New York, and does business in the District of Columbia.

2. The other defendants are hotel companies, operating hotels within the District of Columbia. All of the hotel defendants are members of the Hotel Association of Washington, D. C., Inc., a corporation.

[fol. 98] 3. Public telephone service within the District of Columbia is furnished by The Chesapeake and Potomac Telephone Company.

4. All message toll telephone service between the District of Columbia and points outside the District of Columbia is either interstate or foreign communication service. Message toll telephone service between the District of Columbia and points outside of the District of Columbia is orginated and terminated within the District of Columbia through the facilities of defendant The Chesapeake and Potomac Telephone Company. Defendant The Chesapeake and Potomac Telephone Company furnishes message toll telephone service jointly with defendant American Telephone and Telegraph Company, other associated companies of the Bell Telephone System, and other domestic and foreign connecting companies.

5. Defendant The Chesapeake and Potomac Telephone Company has effective tariff schedules on file with the Dis-

trict of Columbia Public Utilities Commission showing its charges and regulations for and in connection with telephone communication service within the District of Columbia. Defendants The Chesapeake and Potomac Telephone Company and American Telephone and Telegraph Company have effective tariff schedules on file with the Federal Communications Commission, showing their charges, and related regulations, classifications and practices for and in connection with message toll telephone service between the District of Columbia and points outside of the District of Columbia. Each of the defendant telephone companies has on file with the Federal Communications Commission formal concurrences in the effective tariff schedules of the other for message toll telephone service.

6. Telephone service to guests and others within the defendant hotels is provided through private branch exchange (hereafter termed "PBX") installations, made pursuant to subscription contracts between defendant The Chesapeake and Potomac Telephone Company, on the one hand, and the defendant hotels on the other hand. Telephone instruments connected with the PBX switchboards, termed "extension stations", are located in the hotel guest rooms, and to some extent in the administrative offices, lobbies, or elsewhere in and around the hotel premises, such as in [fol. 99] valet shops, drug stores, and the like. Both calls incoming to and outgoing from persons on the hotel premises are handled through the PBX switchboards and extension stations. These installations are also used for intercommunicating calls wholly within the hotel. The PBX switchboards, extension stations, and all of the associated plant and equipment, are owned, installed, and maintained by defendant The Chesapeake and Potomac Telephone Company. Defendant The Chesapeake and Potomac Telephone Company provides in its effective tariffs on file with the District of Columbia Public Utilities Commission against any connections or attachments to facilities or equipment furnished by it when the connection or attachment is not furnished or authorized by it; and that subscribers may not rearrange, disconnect or remove any apparatus or wiring installed by defendant The Chesapeake and Potomac Telephone Company, or permit others to do so, except upon written consent of defendant The Chesapeake and Potomac Telephone Company. Defendant The Chesapeake and Poto-

mac Telephone Company's effective tariffs on file with the District of Columbia Public Utilities Commission for PBX service also provide that:

> "All operating at the subscriber's premises must be performed at the expense of the subscriber and must conform with the rules and regulations which the Telephone Company may adopt to maintain a proper standard of service."

The defendant hotel companies employ and pay the operators at the PBX switchboards located within the hotels. The defendant hotel companies pay to defendant The Chesapeake and Potomac Telephone Company a regular monthly charge in connection with the use of the PBX switchboard and in addition they pay an installation charge and a regular monthly charge based upon the number of PBX trunks and PBX stations. The subscription contracts made by and between The Chesapeake and Potomac Telephone Company and the defendant hotels, the furnishing of the PBX switchboards and other installations thereunder, the method of operation thereof, and the schedule of tariff charges applying to the service are the same in the case of defendant hotels as in the case of other subscribers to PBX service, such as department stores, law offices, newspapers, etc.

[fol. 100] 7. Under the effective tariffs of the defendant The Chesapeake and Potomac Telephone Company on file with the District of Columbia Public Utilities Commission, the PBX service for which defendant hotels subscribe is "business message rate" service, and such service may be used by others in addition to the defendant hotel, or its agents or representatives.

8. The effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission for message toll telephone service apply to interstate and foreign message toll telephone service between all stations located on the premises of defendant hotels, including PBX extension stations, and telephone stations located outside the District of Columbia. The tariff schedule defendant telephone companies on file with the Federal Communications Commission include the following effective pro-

vision, which is applicable to all of their interstate and foreign message toll telephone service:

> "The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones."

9. The effective tariffs of defendant The Chesapeake and Potomac Telephone Company on file with the District of Columbia Public Utilities Commission contain a general regulation that "The subscriber assumes responsibility for all charges for local messages and toll messages sent from the subscriber's station and for toll messages received at such station on which the charges are reversed with the consent of the person called." It is further provided in such tariffs that "a subscriber catering principally to transients and licensed to operate as a hotel shall collect for, and remit to the Telephone Company, its charges incurred by such transients for local and toll messages." This provision, known as the "skipper" provision, was inserted for the purpose of relieving the hotel of payment of a charge for telephone service used by a transient guest when the guest had left the hotel without paying his hotel bill and when the charge could not be collected from the guest. There has been one instance where a hotel has asked for such a credit on account of a telephone charge not collected from its guests.

[fol. 101] 10. The effective tariffs of defendant The Chesapeake and Potomac Telephone Company contain a general regulation that the Company will not transmit messages but offers the use of its facilities for communication. Said regulation reads as follows:

> "The Telephone Company will not transmit messages but offers the use of its facilities when available for communications between customers and or authorized users and will not be liable for errors in transmission or for failure to establish connections. Employees of the Telephone Company are forbidden to accept either oral or written communications to be transmitted over the lines of the Telephone Company or the lines of other carriers."

11. The effective tariffs of defendant The Chesapeake and Potomac Telephone Company contain a general regula-

tion that in the event of a violation of the lawful regulations of the telephone company, the telephone company may either deny service or terminate the service.

12. When a guest or other visitor at one of defendant hotels makes an interstate or foreign telephone toll call from a PBX extension station located within one of the defendant hotels, each of the hotels has followed the practice of collecting from the user the regular effective tariff charges of the defendant telephone companies as filed with the Federal Communications Commission, the Federal tax on such call, and, in addition, an extra charge, or "surcharge". The amount of the surcharge is generally based on a schedule determined by each of defendant hotels in its own discretion, and the surcharge is approximately 10% of the total of the tariff charge plus the Federal tax. The "surcharge" is collected on interstate and foreign message toll telephone calls originating at PBX extension stations located on the premises of defendant hotels whether the calling party pays the tariff charges on the call, or has the tariff charges reversed for collection from the called party. Surcharges are also collected from the user at the hotel with respect to interstate and foreign telephone toll calls received at PBX extension stations located within defendant hotels on which calls the tariff charges are reversed to the called party at the hotel. If a person attempts to make an interstate or foreign telephone toll call from a PBX extension station located on the premises of one of defendant hotels, and he is unable to complete [fol. 102] the call, no tariff charge applies, but defendant hotels collect a 10¢ charge. Defendant hotels collect no charge on interstate and foreign telephone toll calls terminated at PBX extension stations located on their premises for which the tariff charges are being paid by the calling party.

13. The defendant hotel companies render various services to their guests, including the receiving and transmission of mesages and other services of a general secretarial nature which the defendant telephone companies by the express provisions of their tariffs are prohibited from rendering. Such services correspond to what subscribers in general do for themselves and the telephone companies have no control over them.

14. The tariff charges and Federal taxes collected by defendant hotels with respect to interstate and foreign telephone toll calls are remitted to the defendant The Chesapeake and Potomac Telephone Company. Such "surcharges" as are collected by defendant hotels are retained by them. Defendant telephone companies do not authorize, fix, or receive any part of the surcharges collected by defendant hotels from their guests in connection with the use of interstate and foreign message toll service, and said telephone companies have no control over what the hotels are doing in that regard. As in the case of all PBX subscribers the telephone company renders bills to the hotels with an itemized statement of toll messages. The bill covers the entire service furnished by the telephone company, including all calls made over the hotel PBX boards both by the hotels and the guests. The telephone company does not bill the guests, and the bill does not separate toll messages as among guests. The telephone company is not informed of what the hotels actually collect from guests. The telephone company looks to the hotels as its debtors and they pay the complete bills except that with respect to hotels the "skipper" provision quoted above applies.

[fol. 103] 15. When a person desires to make an interstate or foreign telephone toll call from a PBX extension station located on the premises of one of defendant hotels, he may either secure a direct connection with a telephone company toll operator and give her the information as to the call he desires to make, or he may give such information to the hotel PBX operator who will, in turn, give the information to the telephone company toll operator. In either instance the hotel telephone operator stays on the line until the connection for the call is completed. Whether the calling party at the hotel handles the call himself directly with the telephone company toll operator, or places it through the hotel PBX operator, the telephone company toll operator records on the telephone company regular toll ticket information as to the name of the calling party, and his room number at the hotel, as well as the name and location of the called party, and the time and charges on the call. Also, in the case of every interstate and foreign telephone toll call from one of defendant hotels, the telephone company toll operator reports to the hotel operator upon com-

pletion of the call, the amount of the tariff charges and the Federal tax. The hotel operator records the information as to the call, showing the tariff charges, the Federal tax, and the surcharge. Defendant hotels include in their bills to their guests the charges for the latter's interstate and foreign telephone toll calls as so recorded. The surcharge is shown on the bills as a separate charge for the telephone call.

16. Certain of these surcharges were increased in amount in November, 1943, and no application was made to the Administrator of Rent Control for the District of Columbia for approval or authorization.

17. Public telephones are installed in the lobbies or other conveniently accessible locations in all of the hotels operated by the defendant hotel companies through which long distance telephone calls may be made connecting directly with the telephone company and not going through the hotel PBX switchboard or being subject to any hotel surcharge.

18. On January 6, 1942, the Federal Communications Commission ordered an investigation with respect to the matter of its jurisdiction over surcharges being collected within the District of Columbia with respect to interstate and foreign telephone communications. On December 10, 1943, after public hearings and argument, in which defend-[fol. 104] ant telephone companies, the Hotel Association of Washington, D. C., Inc., and others participated, the Federal Communications Commission issued a report in which it found that such surcharges as those above-described are charges for and in connection with telephone communication service, and that in so far as such surcharges are collected from users for and in connection with the use of interstate or foreign communication service covered by the Communications Act of 1934, as amended, they are subject to the jurisdiction of the Commission. A copy of this Report is attached to the complaint. The Commission ordered defendant telephone companies to file tariff schedules.

19. As a result, on January 22, 1944, defendant The Chesapeake and Potomac Telephone Company filed with the Commission, as part of its tariff schedules applicable

to interstate and foreign message toll telephone service, a new tariff regulation, effective February 15, 1944, and which was concurred in by defendant American Telephone and Telegraph Company, providing as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

20. Defendant The Chesapeake and Potomac Telephone Company brought the foregoing tariff provision promptly to the notice of the defendant hotels and sought by interviews and letters to secure their compliance therewith. Said defendant has offered to pay to defendant hotels a commission of 15% on the tariff charges for interstate and foreign toll telephone messages sent-paid or received-collect by guests at extension stations in guest rooms if no surcharges are made to guests by the hotels in connection with such messages in addition to the tariff charges of the company. No such commission had been paid before February 15, 1944, and the Federal Communications Commission has interposed no objection to the payment of such commissions. None of the defendant hotels accepted this offer, but since February 15, 1944 defendant hotel companies have continued to collect surcharges from individuals using PBX extension stations on their premises to make and receive interstate and foreign telephone toll calls.

[fol. 105] 21. There is no contract between either of the defendant telephone companies and any of the defendant hotel companies and there is no tariff in which defendant hotel companies are designated as the agent of either of the defendant telephone companies with respect to interstate and foreign message toll telephone service to and from PBX extension stations located on the premises of defendant hotel companies, and there is no evidence that any such designation of agency has ever been made.

22. The defendant hotel companies are subscribers to the PBX service furnished by defendant The Chesapeake and Potomac Telephone Company, and they subscribe to

such service subject to all of the lawful terms and conditions provided in the Communications Act of 1934, as amended, and in the effective tariffs of defendant telephone companies. The hotels as subscribers specify what equipment shall be installed for the use both of the hotels and the guests.

23. The surcharges being collected by defendant hotel companies are charges imposed against the users of interstate and foreign message toll telephone service. They are made only when such service is used, and they are a part of the charge made to the users of interstate and foreign message toll telephone service in connection with such use. These surcharges are collected by the defendant hotel companies in connection with interstate and foreign telephone toll communication service.

[fol. 106] CONCLUSIONS OF LAW

1. The Communications Act of 1934, as amended, applies to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio (47 U. S. Code, Sec. 152(a)).

2. The Federal Communications Commission was created by the Communications Act of 1934 (47 U. S. Code, Sec. 151), to execute and enforce the provisions of that Act.

3. As common carriers engaged in interstate and foreign telephone communication by wire and radio, it is the duty of each of the defendants, American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company, under the Communications Act of 1934 (47 U. S. Code, Sec. 203(a)), to file with the Commission schedules showing all charges for itself and its connecting carriers for interstate and foreign telephone communications between the different points on its own system, and between points on its own system and points on the system of its connecting carriers, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges.

4. Under the Communications Act of 1934 (47 U. S. Code, Sec. 203), upon the filing of such schedules, it is unlawful

for any change to be made in the charges, classifications, regulations or practices so filed, except after 30 days' notice to the Commission and to the public, (or such shorter period of notice as may be specially authorized by the Commission), and it is unlawful for any carrier to charge, demand, collect, or receive a different compensation for interstate or foreign telephone communication, or for any service in connection therewith, other than the charges specified in the schedules then in effect, or to extend to any person any privileges or facilities in such communication, or to employ or enforce any classifications, regulations or practices affecting such charges, except as specified in such schedules.

[fol. 107] 5. "Wire communication" is defined in Section 3(a) of the Communications Act of 1934 to mean "the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission." (47 U. S. Code, Sec. 153(a)).

6. The surcharges being collected by defendant hotel companies from users of interstate and foreign message toll telephone service to and from the premises of defendant hotels are charges for and in connection with interstate and foreign telephone toll communication service, within the meaning of the Communications Act of 1934, as amended.

7. The defendant hotel companies are subscribers to the interstate and foreign message toll telephone service furnished by defendant telephone companies, and they are not the agents of defendant telephone companies as to the furnishing of such service. As such subscribers, defendant hotel companies received interstate and foreign message toll telephone service subject to all of the legally effective terms and conditions in the Communications Act of 1934, as amended, and in the tariff schedules of defendant telephone companies on file with the Federal Communications Commission.

8. The tariff regulation with respect to interstate and foreign message toll telephone service filed with the Federal Communications Commission by defendant The Chesapeake

and Potomac Telephone Company on January 22, 1944, to be effective February 15, 1944, and formally concurred in by defendant American Telephone and Telegraph Company, providing that "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company" as set forth in its tariffs, is a legally effective tariff regulation under the provisions of [fol. 108] the Communications Act of 1934, as amended, applicable to interstate and foreign message toll telephone service to or from telephone instruments located on the premises of defendant hotel companies. This tariff regulation is binding both on defendant telephone companies and on each of the defendant hotel companies.

9. The collection by defendant hotel companies from users of interstate and foreign message toll telephone service of an extra charge, or surcharge, in addition to the regular tariff charges specified in the effective and applicable tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the Federal tax on such service, is contrary to the above tariff regulation. The collection by defendant hotel companies of any such surcharge is therefore illegal and should be enjoined. The defendant telephone companies are not violating said tariff regulation by any act or omission of their own, and are not responsible for the violations being committed by the hotels.

10. Any questions as to the justness and reasonableness of the above tariff regulation should be first submitted to the Federal Communications Commission for its determination under the Communications Act of 1934, as amended, and any such questions may be properly submitted to a Court, only after a prior determination by that Commission.

11. The telephone communication service provided to persons in their use of interstate and foreign message toll telephone service by means of private branch exchange extension stations located on the premises of defendant hotel companies is "telephone toll service" within the meaning of Section 3(s) of the Communications Act of 1934, as amended (47 U. S. Code, Section 153(s)), and it is not "telephone exchange service" within the meaning of Sec-

tion 3(r) of the Communications Act of 1934, as amended (47 U. S. Code, Sec. 153(r)). The surcharges collected by defendant hotel companies in connection with interstate and foreign message toll telephone service are therefore not excluded from the jurisdiction of the Federal Communications Commission by the provisions of Section 221(b) of the Communications Act of 1934, as amended, (47 U. S. Code, Sec. 221(b)).

[fol. 109] 12. There is no provision in the District of Columbia Emergency Rent Act (Public Law 327, 77th Congress, approved December 2, 1941) which excludes the Federal Communications Commission from jurisdiction under the Communications Act of 1934, as amended, over the surcharges being collected by defendant hotel companies in connection with interstate and foreign message toll telephone service.

13. The pendency before a statutory three-judge court of a suit brought by the Hotel Association of Washington, D. C., Inc. under the provisions of Section 402(a) of the Communications Act of 1934, as amended (47 U. S. C., Sec. 402(a)) to enjoin and set aside the Federal Communications Commission's order of December 10, 1943 does not deprive this Court of jurisdiction of this suit.

14. A permanent injunction shall issue restraining the defendant hotel companies, and each of them, and all persons acting under the authority or control of each of them, including their officers, agents, and servants, from charging, demanding, collecting, or receiving any charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of defendant hotel companies, other than the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the applicable Federal taxes.

15. The Court should retain jurisdiction over this proceeding so that if any of the defendant hotels make charges in violation of the foregoing injunction the Court may enjoin the defendant telephone companies from rendering interstate and foreign message toll service to such hotels.

Daniel W. O'Donoghue, Associate Justice.

Dated June 8th, 1944.

[fol. 110] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 23189

UNITED STATES OF AMERICA, Plaintiff,

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, et al., Defendants

ORDER FOR PERMANENT INJUNCTION—Filed June 8, 1944

This cause came on to be heard before the Court on the complaint of plaintiff seeking a permanent injunction, and on the answers of defendants. After a trial held on April 26 and 27, 1944, in which the testimony of witnesses, other evidence, and argument of counsel were presented, the Court found for plaintiff against defendant hotel companies herein, and is this day entering Findings of Fact and Conclusions of Law in support of its judgment.

It appearing that on January 22, 1944, defendant The Chesapeake and Potomac Telephone Company filed with the Federal Communications Commission, as part of its tariff schedules applicable to interstate and foreign message toll telephone service, a new tariff regulation, effective February 15, 1944, and which was concurred in by defendant American Telephone and Telegraph Company, providing as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club, in addition to the message toll charges of the Telephone Company as set forth in this tariff."

It further appearing that notwithstanding the provisions of this tariff regulation, and the provisions of Section 203 of the Communications Act of 1934, as amended, defendant hotel companies have since February 15, 1944, continued to collect extra charges, or surcharges, from individuals using telephone private branch exchange extension stations on

[fols. 111-237] the premises of defendant hotel companies to make and receive interstate and foreign telephone toll calls, in addition to the regular and effective tariff charges of defendant telephone companies, and the Federal tax, applicable to such calls.

It is, therefore, this 8th day of June, 1944, adjudged, ordered, and decreed, that the defendant hotel companies, and each of them, and all persons acting under the authority or control of each of them, including their officers, agents, and servants, be, and they, and each of them, are hereby enjoined and restrained from charging, demanding, collecting, or receiving any charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of defendant hotel companies, other than the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the applicable Federal taxes.

The Court retains jurisdiction over this proceeding in order that it may issue any other injunction against the defendants, or any of them, as may appear necessary to effectuate its decision.

By the Court.

Daniel W. O'Donoghue, Associate Justice.

Dated: June 8th, 1944.

[fol. 238] [File endorsement omitted]

IN DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[File endorsement omitted]

Civil Action No. 23,189

UNITED STATES OF AMERICA, Plaintiff,

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, et al.,

Defendants

Transcript of Proceedings—Filed August 11, 1944

Washington, D. C.,
Wednesday, April 26, 1944.

The above-entitled cause came on for hearing before Associate Justice Daniel W. W. O'Donoghue, in Civil Division No. 6, at 10:00 o'clock a. m.

APPEARANCES:

On behalf of the United States:

Harry M. Plotkin, Esq., Special Assistant to the United States Attorney, Benedict P. Cottone, Esq., and Harold G. Cohen, Esq.

On behalf of American Telephone and Telegraph Company:

T. Brooke Price, Esq., General Attorney, A. T. & T., New York, N. Y., and E. S. Hawley, Esq., New York, N. Y.

On behalf of the Chesapeake & Potomac Telephone Co.:

R. A. Van Orsdel, Esq., and Spencer Gordon, Esq.

[fol. 239] On behalf of the Hotel Assoeation of Washington, D. C., Inc.:

Joseph McGarraghy, Esq., Parker McCollester, Esq., and Joseph W. Wyatt, Esq.

[fol. 240] PROCEEDINGS

Mr. McGarraghy: Before Your Honor proceeds, may I introduce to Your Honor Mr. Parker McCollester, of the New York Bar, who will be associated with me.

The Court: He will be admitted for the purposes of this case.

Mr. Gordon: If the Court please, I would like to introduce two gentlemen from New York, who are representing the A. T. & T.: Mr. Price, General Attorney for the Company, and Mr. Hawley. They are both members of the New York Bar, and we would like to have them admitted for the purposes of this case.

The Court: They will be admitted for the purposes of this case.

Mr. Plotkin: My name is Harry M. Plotkin. I am Special Assistant to the United States Attorney, appearing for the Government in this case.

This, Your Honor, is a pamphlet containing the provisions of the Communications Act. It may be convenient from time to time, as we refer to certain provisions as set forth there, to look at them.

(Pamphlet handed to the Court.)

OPENING STATEMENT ON BEHALF OF THE UNITED STATES

By Mr. Plotkin:

Mr. Plotkin: If it please the Court, before we introduce [fol. 241] our evidence, I believe it would be helpful to give a brief statement of what this case is about.

This is a suit brought by the United States at the request of the Federal Communications Commission, pursuant to Section 401(c) of the Communications Act, against the American Telephone and Telegraph Company, the Chesapeake & Potomac Telephone Company, and 27 hotels doing business in the District of Columbia. We are seeking an injunction to enjoin the collection of so-called surcharges which are charged by defendant hotels to their guests when the guests make long distance telephone calls from their hotel rooms.

The facts in the case are simple, and on the whole are undisputed. Most of the facts are set forth in the complaint and are admitted by the answers. There are certain

few facts that are not admitted, and we will put on witnesses in that connection.

Local telephone service in the District of Columbia is rendered by the Chesapeake & Potomac Telephone Company. Interstate and foreign long distance telephone service is furnished by the Chesapeake & Potomac Telephone Company in conjunction with the American Telephone and Telegraph Company and in conjunction with other connecting carriers.

As is well known, guests in hotels secure telephone service in their rooms by means of telephone extension stations, which are connected to a central hotel switchboard, which [fol. 242] is called a private branch exchange, or in the industry it is more popularly known as a PBX. Through this PBX guests can call other extension telephones in the hotel, and can be connected with outside lines for the purpose of making either local calls or long distance calls.

The PBX switchboard, the extension stations, and all the associated equipment, are owned, installed and maintained by the Chesapeake & Potomac Telephone Company. The regulations governing the installation charges, the service charges per month, and so forth, are set forth in the tariffs of the Chesapeake and Potomac Telephone Company, which are filed with the local commission, that is, the District of Columbia Public Utilities Commission, and we will introduce copies of those tariffs for the record.

The tariffs provide that no connection or attachment to the equipment is permitted, nor may the apparatus or wiring be rearranged, disconnected or removed, without the consent of the Chesapeake & Potomac Telephone Company.

The operators of the PBX are employees of the hotels, but one of the regulations in the tariff provides that they must conform with the regulations of the Telephone Company which the Telephone Company may adopt from time to time, in order to maintain a proper standard of service.

The hotels pay to the Chesapeake & Potomac Telephone Company an installation charge for this equipment, and also [fol. 243] a regular monthly charge for its use. That covers the equipment.

They also pay a certain monthly charge for each extension telephone.

Calls which are made either by the management, employees, or by guests, are paid for by the hotels also. If they are local calls, they pay so much per call, which starts at 5 cents,

and as the number increases it is so much less, until it gets down, I think, eventually to about 3 cents per call. If long distance calls are made, the hotel pays the Telephone Company the particular charges which are set forth in the applicable tariffs. That is what the hotels pay to the Telephone Company.

Now when guests make calls from their rooms, the hotels charge the guests in addition to the amount which they turn over to the Telephone Company; in the case of local telephone calls they charge them 10 cents—in other words, 5 cents over, and above what you would normally pay from a coin box telephone. If long distance calls are made, the charge is the regular tariff charge which they turn over to the Telephone Company, plus an extra charge which is called a service charge or surcharge. Each hotel has a different schedule of charges for these calls. In general, however, the amount of the charge varies with the amount of the toll charges. As the toll charges increase, the amount [fol. 244] of extra charges increases. The service charge is generally a certain percentage of the amount which the Telephone Company charges

This case is not concerned with the extra charge which is made on the local telephone calls. Local exchange service is a matter within the jurisdiction of the District of Columbia Public Utilities Commission and not of the Federal Communications Commission.

What is involved here are the surcharges which are made by the hotels on interstate and foreign long distance telephone calls. Such communication comes under the provisions of the Communications Act, and is under the jurisdiction of the Federal Communications Commission.

I should like just for a few minutes to give you to highlights of the particular provisions of the Communications Act which are involved in this proceeding.

The Court: Before you do that—of course I know nothing about this case except what you have just told me—I see here that there are 30 defendants. One of them, I see, is the Raleigh Hotel Company. I have some stock in that. If counsel want to go ahead, with that information in advance, they may do so. The stock is 101 shares. I believe it is quoted on the market as being $50 a share. Whatever it is, I don't know. I have had it for years.

Mr. Plotkin: On behalf of the Government, I have no objection.

[fol. 245] The Court: Do counsel for the defendants have any objection?

Mr. Price: We certainly have no objection.

Mr. McGarraghy: We have no objection.

The Court: Of course, it won't make any difference in my judgment of the case. My holdings are very small. I don't know how much stock is outstanding, I think it is a million and a half, I don't know just what it is. But I have 101 shares.

Mr. Plotkin: I am sure that the outcome of this case will have no effect at all on the value of that stock.

The Court: All right.

Mr. Plotkin: I was about to refer to the more important provisions of the Communications Act which are involved in this proceeding.

Section 2 of the Communications Act gives to the Federal Communications Commission jurisdiction over all interstate and foreign communication, by wire or radio, which originates and/or is received within the United States, and over all persons who are engaged in such communication within the United States—a broad grant of jurisdiction over interstate and foreign telephone communications.

Wire communication, which is what is involved here, is broadly defined in Section 3(a) of the Act as follows:

"'Wire communication' or 'communication by wire' [fol. 246] means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and service (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission."

As I have already pointed out, the Chesapeake & Potomac Telephone Company and the American Telephone & Telegraph Company are common carriers, engaged in interstate and foreign communication by wire and radio, within the meaning of the Communications Act. As such common carriers, it is the duty of each Telephone Company, under Section 203(a) of the Communications Act, to file with the Commission tariff schedules which show all charges for itself and connecting carriers for interstate and foreign telephone communications between the different points on its own system and between the points on its own system and

points on the system of its connecting carriers. These schedules must also show the classifications, practices and regulations affecting such charges.

Once such schedules are filed, once these tariffs have been filed with the Commission, Section 203(b) and Section 203(c) provide that no change shall be made in the charges, classifications, regulations or practices except after thirty [fol. 247] days' notice to the Commission and to the public.

It is also made unlawful to make any charges different from those set out in the schedule, or to employ or enforce any classification, regulation or practice affecting such charges except as set forth in the schedule.

That is roughly the same sort of statutory provisions that you have in all public utility cases. Before they can render service they must file tariffs with the appropriate regulatory agency, and once those tariffs are filed they can't be changed except by following the statutory procedure, and no other charge can be made except what is specified in the tariff.

The defendant telephone companies have on file with the Federal Communications Commission, schedules, as required by Section 203 of the Act. These schedules show the charges for interstate and foreign long distance calls, and the regulations and practices affecting these charges.

As I have already pointed out, the only thing we have jurisdiction over is the interstate and foreign, and their tariffs show the charges for interstate and foreign long distance calls, not for local calls.

One such regulation of the telephone company, the one which is involved in this proceeding, was added in January of this year, to be effective February 15, 1944. It is found in Exhibit 4 to our Complaint, and reads as follows—it is [fol. 248] a very short provision:

"Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

This regulation, in substance, provides that the telephone companies will furnish interstate or foreign long distance service to hotels—and we are only concerned with hotels in this case, the provision about apartment houses

and clubs isn't involved here—that such telephone service is furnished to the hotels on condition that no extra charge for such calls will be made by the hotels to the guests in addition to the tolls which are set forth in the tariffs.

I think it would be helpful if I just, in a few minutes, gave you a picture of how this tariff happened to be filed.

It involves a proceeding before the Federal Communications Commission which started in January, 1942, a little over two years ago. The Commission issued an Order of Investigation, where it pointed out that certain hotels in the District of Columbia were collecting extra charges from guests when they made interstate or foreign long distance telephone calls. As a matter of fact, that situation is true not only in the District of Columbia, but it is probably [fol. 249] true over the entire country. The District of Columbia was chosen because it was convenient as a test case for the proposition.

The Commission ordered that a hearing be held on the subject to determine whether the charges on those long distance calls were within the jurisdiction of the Commission, and what tariffs, if any, should be filed with the Commission showing such charges. At that time there was nothing in the tariffs which made any mention of these charges at all.

The Chesapeake & Potomac Telephone Company, and the American Telephone and Telegraph Company, were made respondents to that proceeding. The order of investigation was also served on the Hotel Association of Washington, D. C., Inc. The Hotel Association, I may point out, Your Honor, is an association representing hotels, and all of the defendant hotels in this proceeding are members of that Hotel Association.

The order of investigation was served on the Hotel Association, and the order also provided that any hotel, apartment house or club might participate in the proceedings. No hotel, as such, entered an appearance, but the Hotel Association did enter a special appearance, and filed a motion to dismiss the Commission's proceedings on the ground that we lacked jurisdiction. This motion was denied, and the matter then proceeded to hearing. At the hearing, the defendant telephone companies, the Hotel [fol. 250] Association, and others, participated.

On December 10, 1943, at the conclusion of the hearing, the Commission issued a report, and we have attached a copy of that report as Exhibit 2 to our Complaint.

In it, the Commission found that it does have jurisdiction over the surcharges which are collected by hotels, because they are charges for and in connection with interstate and foreign telephone communications service within the meaning of the Communications Act. The Commission further found that if such surcharges are to be collected at all, they must be shown in tariffs on file with the Commission. In other words, under Section 203 of the Act, if these are charges for telephone service, it is illegal to collect them unless there are tariff provisions made which specify the charges to be collected.

Finally, the Commission found that the hotels which collect the surcharges are either agents of the telephone company for that purpose, or they are subscribers, and can receive service only subject to such proper conditions as are attached. In other words, we made an alternative finding. We found either that in collecting these surcharges they act as agents of the telephone company; or, alternatively, if they are not agents they are subscribers, and as subscribers to telephone service they can receive it only subject to the tariff regulations.

[fol. 251] On December 10, 1943, the Commission also issued an order against the two telephone companies, ordering them to file tariffs showing all the charges being collected by the hotels and others for interstate and foreign long distance calls. The order, however, provided that the tariffs which are required to be filed with the Commission could consist of a tariff regulation containing specific provisions showing the conditions upon which telephone service is furnished to the hotels, apartment houses, and clubs. In other words, we gave the telephone companies a choice. We said, "Either come in and file tariffs with us which show the charges that are being collected, or, if you don't want to do that, come in and file a tariff with us which shows the conditions upon which you are rendering this type of service to the hotels. The telephone companies chose the second alternative, that is, they filed a tariff with us, which I have already read, which provides that service is rendered to the hotels on condition that no surcharges will be collected from the guests. Under our order they could have done

that, or they could have filed a tariff showing the particular charges that were being collected by the hotels.

Of course, under the alternative that they chose, surcharges can not be validly collected any more, because the services are rendered on condition that no surcharge would be collected, but the Commission did not require the elimina-
[fol. 252] tion of surcharges, we simply said either to file tariffs showing what the charges are that are being collected, or show the conditions upon which service is being rendered.

At about the time that the telephone companies filed the tariff that I have just referred to, they also got in touch with the hotels and offered to pay to the hotels a commission of 15 percent of all amounts collected by the hotels for interstate and foreign long distance telephone calls. That would be a commission to the hotels, either on outgoing prepaid long distance calls, or incoming collect calls.

This, in brief, is the factual background of the case. In substance, what is involved here is a tariff regulation of the telephone companies effective on February 15, which provides that interstate and foreign telephone service is furnished to the hotels on condition that no extra charge will be collected by the hotels.

We have only a couple of witnesses and a few exhibits. As a matter of fact, so far as the important issues in this case are concerned, the case could very well have been tried upon the basis of the administrative record made before the Commission without the necessity of taking further evidence. However, since the Commission at its hearing was concerned only with the general issue of whether the hotel surcharges are for and in connection with telephone
[fol. 253] service, no evidence was taken as to the practices of each of the defendant hotels. We considered the over-all problem and not what was done in each individual hotel. From our point of view the over-all picture was the important thing, not the individual picture.

Also, evidence must be presented to show that each of the defendant hotels has made the surcharges since February 15, 1944, the date upon which the tariffs became effective.

With the cooperation of the defendants, we will make this presentation as short as possible.

We are ready to proceed with our case, unless the defendants want to make a statement.

OPENING STATEMENT ON BEHALF OF THE HOTEL ASSOCIATION OF WASHINGTON, D. C., INC.

By Mr. McGarraghy

Mr. McGarraghy: If the Court please, Mr. McCollester and I represent the hotels in this case. I should like to supplement what Mr. Plotkin has said as to the factual background, in support of the hotels' defense to this Complaint, which may be stated to be two-fold:

First, the hotels are not violating the tariff provision in that the charges which the hotels make are not for message toll service, but are for services in addition to telephone service for which the tariff charge is made. I will elaborate on that in just a second.

And in addition, we say that if it should be found that [fol. 254] these charges are technically in violation of the tariff, then the tariff itself is unlawful, because it undertakes, by a regulation of the telephone company, to regulate a charge of a hotel for a hotel service, not subject to the jurisdiction either of the telephone company or of the Federal Communications Commission.

Incidental to that, there are several other points which I will develop during the course of my statement to Your Honor, one of which is, of course, that this is a proceeding under a section of the Act which applies to a carrier, and of course hotels are not carriers. Counsel has referred to the fact that an agency has been found to exist; whereas, the evidence will clearly establish that there is no agency, and in that both the telephone companies and the hotels are in complete agreement, that no agency in fact exists between the telephone companies and the hotels. And in fact, the tariff which has been filed, and the enforcement of which is sought in this proceeding, is not framed on the theory of agency, but it is framed solely on the theory of a subscriber relationship between the hotel and the telephone company.

Now the facts which we will develop before Your Honor are substantially these:

As Mr. Plotkin has pointed out, the telephone equipment within the hotel belongs to the telephone company, it is [fol. 255] owned by it, technically, but it rents that equipment to the hotel. Every item of equipment, the switch-

board, the extensions, the hand sets in the individual rooms, are all rented by the hotel from the telephone company. So that the hotel has complete dominion and control over that equipment within the hotel. It decides the amount of equipment that it will take, and the extent of the service that it will render. It pays the established rental for that equipment to the same extent and in the same amount that is paid by every other subscriber to so-called public branch exchange service, and there are many subscribers to such service in addition to hotels, apartment houses and clubs. For example, the large department stores, office buildings, lawyers' offices, and so forth, all have PBX boards, and the hotels pay the same rate for this equipment, the same rental rate for this equipment, that every other subscriber does.

In addition to that, all of the operators within the hotel—of course, in some hotels the number of operators is quite large, I think in some it amounts to as many as 35 employees—are employees of the hotel company. We regulate their conduct, we pay their wages, we pay their social security, we hire them and we have the right to fire them, subject to our union contract, they being covered by a union contract, I think, in practically all of the hotels that are defendants in this case.

[fol. 256] Now we have to go back a little ways to remind Your Honor that in a hotel, which is a service industry, we generally divide the hotel into two departments,—the rooms, where we accommodate the guests, and provide them shelter; and the food department, and beverage department in recent years, where we provide them with food and drink. They are the two general sources of revenue to the hotels.

As the telephone developed, and telephone service was installed in the hotels, there developed a further service which hotels rendered their guests, a service of receiving and handling messages, a service of a secretarial nature, of making calls, of handling any number of transactions which are apart from either the occupancy of the room or the furnishing of meals and beverages to guests.

Now as I pointed out to Your Honor, that service is an expense item to the hotel. The equipment costs the hotel money. The operation of that service costs the hotel money. So that there developed in the hotel the principle that in-

stead of spreading the cost of that service over the entire patronage of the hotel by perhaps adding it to the room charge, that the cost of that service should be allocated to those who use it. And the most equitable procedure that was found practicable was to charge that against the guests making outgoing calls, because, while it can not be 100 percent mathematically correct, it can not be precise, we [fol. 257] can say that it is generally a fact that those who make the outgoing calls are also those who receive the service on incoming calls, and that in fairness the cost ought to be allocated to those who use the service.

And that is a practice that has developed over the years and has been in existence, I think, as long as we have had telephone service in hotels—not merely in Washington, but as counsel says, throughout the country.

Now that was the condition which existed in Washington in 1941, when the room rates in the hotels of the District of Columbia became frozen under the Emergency Rent Act for the District of Columbia. That was the condition when the regulations of the Office of Price Administration became effective in 1943, freezing the rates on menues for food and beverages. So that the only departments to which this cost item could possibly be transferred, if we are prohibited from making it as we have done all these years, namely, to the room charges and the food and beverage charges, have been frozen, so we could not transfer it to either of those. And we have this cost item, which as I say has been a cost item that has been in effect over all of these years, and is still in effect.

Now in 1942, the Federal Communications Commission issued its order of investigation. That order of investigation, in substance, was: We want to see if these charges [fol. 258] which the hotels are making are subject to our jurisdiction. That was the sole question that the Federal Communications Commission considered at its hearing and investigation which followed.

On that point, we contended that they were not subject to the jurisdiction of the Federal Communications Commission, because they are service charges made by hotels and are not telephone charges.

The order of investigation clearly was that if there was to be an assertion of jurisdiction, then the Communications Commission would exercise its regulatory power to see that

the charges were fair and reasonable. But after it had asserted its jurisdiction and entered its order, directing the telephone companies to file a tariff, as has been stated the telephone company, on January 15 or January 22, I think it was, filed a tariff not saying that the hotels may charge 10 percent for this extra service over and above what the telephone company renders, but that it is a condition of service that no charge shall be made by hotels other than the toll charge contained in the tariff of the telephone company. So that if that tariff is good, and if it applies to these services, the telephone company, by its tariff provision, and without even consulting us—the tariff having been filed and we then having been informed of it—have proceeded to cut off a substantial source of revenue, and we can not look to any other place for that revenue for the hotels.

[fol. 259] Now as I said a minute ago, this equipment within the hotel is self-contained. The long distance message is made when the telephone company is contacted at our PBX board. We make no charge beyond that of the telephone company for the service that is rendered, for the telephone call from the PBX board to the telephone company to the city in some other State, or wherever it may be. The charge that we make is for hotel service.

Mr. Moore, of the Shoreham Hotel, is here, and will testify, in greater detail than I think is appropriate for me to in an opening statement, as to the elaborate services that are rendered by the hotels.

It could be that those charges, as a matter of hotel policy, should have been included in the room rates, and the room rates increased to cover them. But that hasn't been the policy of the hotels in the past. I don't think that either the Telephone Company or the Federal Communications Commission have a right to tell the hotels what their policy should be, whether we should charge it in one way or another, so long as it is a charge for hotel service.

As I say on those two propositions, first, we are not in violation of the tariff, because we do not charge the guests any more for the toll message service than is provided in the tariff, that charge being for something in addition to that; and, second, if it should be held that the tariff is so [fol. 260] framed as to cover it, then the tariff is not susceptible of enforcement because it constitutes an invasion

of the rights of the hotels to regulate the rates which they charge their guests.

OPENING STATEMENT ON BEHALF OF DEFENDANT TELEPHONE COMPANIES—BY MR. PRICE

Mr. Price: May it please the Court, the statement on behalf of the plaintiff, as I heard it, didn't indicate that there was any relief sought against the telephone companies. It might leave the Court wondering why we are here at all. In fact, we wonder about that a little ourselves.

But the fact is that the complaint in this case alleges that all the defendants, without distinction,—the telephone companies and the hotels,—are violating the tariff provision which we, the telephone companies, have placed in our tariffs, by imposing charges in connection with this interstate and foreign message toll service in addition to the tariff charges.

The Court: Before you proceed, have all these defendants filed answers on the merits of this case?

Mr. Price: Yes, Your Honor.

The Court: So it is understood by all counsel and all parties that this is a hearing finally on the merits?

Mr. Price: Yes, Your Honor.

Mr. McGarraghy: Yes, Your Honor.

Mr. Plotkin: Yes, Your Honor.

[fol. 261] The Court: Your remark that you couldn't see why the telephone companies were in here led me to think that maybe you had filed a motion to dismiss, or something of that kind, but that isn't so?

Mr. Price: No, we have not filed such a motion, and this is a hearing on the merits as to all parties.

The plaintiff seeks relief in two aspects: It asks the Court to enjoin both the telephone companies and the hotels from violating the tariff provision; and it asks also for an injunction forbidding the telephone companies to continue to furnish this service to the hotels if the hotels violate the tariff provision by collecting these surcharges in connection with the service.

So, because of this rather strange identification of the telephone companies—who have filed the tariff provision and are seeking to regulate or to impose this condition upon the use of the service by the hotels—the identification of them with the hotels, who are refusing to conform to the

tariff provision, it seems necessary to make a little statement of what we think the issues are, as affecting the telephone companies, and what we expect to show Your Honor in that connection.

We were directed by the Federal Communications Commission, in the proceeding to which Mr. Plotkin referred, to file, as he said, either a tariff provision showing the [fol. 262] charges made by the hotels as charges for telephone communication service, or, in the alternative, to attach a condition to our offering of the service to the hotels to deal with that matter.

Now the Commission has found, against our contentions, that these charges of the hotels,—which we don't control, which are not paid to us and from which we get no benefit,—were in fact charges for our telephone communications service; and we disagreed with that position, and felt or took the position, as the hotels had, that that was not so. Since the alternative was offered to us of either filing those charges as our own tariff charges, or of attaching to the use of the service a condition, we accepted, as has been said, the second alternative and imposed this condition upon the use of the service.

The only satisfactory way to deal with the thing, which has long been a troublesome matter and a source of contention and discussion among hotels and telephone companies throughout the country for many, many years, seemed to us to be to cut it off entirely, and so the provision that was filed provided that there should be no surcharges. And in that connection, following a practice that has prevailed in many parts of the country for many years, in recognition of the fact that the way in which this service is furnished to the hotels enables them to make it available to their guests, and that they gather into a single account [fol. 263] all the charges to the guests, which facilitates our dealing with the matter on a commercial basis, and that they may assist us in the promotion of the service under suitable conditions, we offered to pay to the hotels a commission of 15 percent upon the tariff charges collected on this interstate message toll business.

That matter affected both the Chesapeake & Potomac Telephone Company, the local company here in the District of Columbia, and also the American Telephone and Telegraph Company, which participates with it in the long dis-

tance service. So the matter was dealt with as one affecting our system companies as a whole, and all of the companies filed this tariff provision, and all of the companies made this offer of the 15 percent commission, in order to unify the practice in dealing with the hotels on this matter.

A great many hotels have accepted that offer of a commission, and have agreed that they will not make these service charges, including a considerable number of hotels here in the District of Columbia. The hotels that are defendants here took the opposite position.

Now, although, as I have said, we disagreed with the Federal Communications Commission about its ruling that these charges of the hotels are really charges for the telephone service of the telephone companies and should be filed in the telephone companies' tariffs, nevertheless we be-
[fol. 264] lieve—and I merely want to state the position, not argue it—that the tariff provision as we filed it, attaching this condition to the use of the service by the hotels as subscribers, is a valid tariff provision. We think that that is a proper and a reasonable type of tariff regulation, of which there are many, of course, in our tariffs, relating to a variety of matters.

Mr. McGarraghy's statement attacked that as perhaps an unreasonable condition. We think it is reasonable, but we think, in any event, that question is not before this Court in this case. As we understand it, that matter is presented to the Federal Communications Commission, a Federal commission, by complaints which have been filed by the Hotel Associations, attacking the tariff provision as unreasonable and discriminatory, and those matters will be heard, no doubt, in due course before that Commission, which is the body that, under the statute, has jurisdiction over the question of reasonableness of tariff regulations. And the hotel defendants, in their answer here, as I read it, agree that the question of the reasonableness of that regulation is not involved here, and is not before the Court in this case.

So it seems to be merely a question of the enforcement of a tariff provision, by injunction or otherwise, which would seem to be enforceable unless it is void on its face.

Now the only issue that affects us directly is whether
[fol. 265] there should be an injunction against the telephone companies, and we think there should not be. We think it will appear that there is no occasion for that, be-

cause our case will be directed toward showing that the telephone companies at least are not violating their own tariff in that the hotels are collecting certain surcharges; that there is no such identification of the hotels with the telephone companies which by any fiction whatever could lead to the result that the telephone companies are responsible and should be enjoined.

Mr. McGarraghy has suggested some of the considerations which enter into that; that the hotels, as the evidence will show, are not our agents in this matter; that what they do, they do on their own and not by any authority from us. Therefore, it seems to us there could be no occasion to ask that relief against the telephone companies.

Perhaps I should say just as a matter of precaution that Mr. McGarraghy's statement that the hotels rent all the facilities they use, from us, is not in accordance with the relationship as we understand it. It is quite true that the switchboards and the telephones and the wires are all our property. They are put into the hotels at the order of the hotel, but they are merely our facilities which we place there for the purpose of rendering service, and we do not rent them, in any true sense, to the hotels. I am not sure that that makes any important difference, but I would like to [fol. 266] make that qualification.

Mr. McGarraghy: May I make one further observation? It was quite unintentional on my part that I did not say to your Honor that we do have a complaint now pending before the Federal Communications Commission in which we attack the reasonableness of the tariff. That is pending, and has been set for hearing by the Federal Communications Commission, I think, on May 17. So far as this Court is concerned, I do not attack the reasonableness of the tariff, but the lawfulness of the tariff.

The Court: When you say the tariff, you mean the tariff that was filed in January to become effective in February?

Mr. McGarraghy: Yes, Your Honor.

The Court: Does that include this 15 percent?

Mr. McGarraghy: Oh, no, that is not in the tariff at all. That was just an offer of a contract, which we have not accepted.

The Court: And that isn't before the Commission?

Mr. McGarraghy: No, it is not a part of the tariff.

The Court: It is just a question of whether you will accept 15 percent commission for the work that you do, from

the telephone company, and that they will allow you that—. and then they would try to get that allowed to them by the Commission?

Mr. McGarraghy: They have offered us a contract pro-
[fol. 267] viding for a 15 percent commission, which we have not accepted.

The Court: If they did allow you that, they would have to put that in a tariff before the Commission?

Mr. McGarraghy: They have made no such effort.

Mr. Price: We have made no such effort, and we don't believe it belongs there. We believe it is an expense of the telephone business, the payment of this 15 percent commission, rather than a proper matter for tariff control.

There is just one other slight correction. It is true we asked the hotels in that connection to sign a contract with us in order to have a business basis for making this payment, but when we met some resistance on that we changed that, and we have now offered to pay the commission if the hotels will merely give us a letter stating that they are not collecting and will not collect any surcharges from their guests.

Mr. Plotkin: I don't think it affects the issue, but just to get one matter straight on the record, you asked Mr. McGarraghy whether the 15 percent commission arrangement is before the Commission, in the whole proceeding which they have filed before us. That question will be gone into, that is a part of the proceeding before the Commission. I don't know how that affects this case, but I would like to have the record.

[fol. 268] The Court: But it is not before this Court?

Mr. Plotkin: No, it isn't.

The Court: The question before this Court is whether the tariff filed by the telephone companies, to be effective February 15, 1944, is to stand.

Mr. Plotkin: That is right.

The Court: Or is not valid and lawful.

Mr. Plotkin: Yes.

The Court: So far as the telephone companies are concerned, you don't claim that that is unlawful, the tariff as filed?

Mr. Price: No, indeed. We claim it is perfectly valid and ought to be complied with, and we are trying to get the hotels to comply with it.

The Court: So the controversy is really between the Commission and the hotels, is that right, primarily?

Mr. McGarraghy: I think so, primarily.

There is the further point as to whether we are violating the tariff, if it is lawful. That is another question.

The Court: I think you had better enlarge a little bit on what you claim to be this extra service, Mr. McGarraghy, if you call it that. I know that when somebody calls up from the Mayflower to New York City, there is a certain toll charge, is that right?

Mr. McGarraghy: Yes, Your Honor.

[fol. 269] The Court: And the guest pays that, and then you pay it to the telephone company?

Mr. McGarraghy: Yes, Your Honor.

The Court: Now then, you say that in addition to that there are some services that the Mayflower Hotel renders. I want to know what you regard as those extra services, on which you wish to base an additional charge on that toll charge made to that guest for the call from Washington to New York City.

Mr. McGarraghy: May I read, just because I can do it much more simply and quickly that way?

The Court: Surely.

Mr. McGarraghy: The hotels, through their employees, render guests many items of secretarial, hotel and information service, such as looking up telephone numbers, answering questions, reporting to guests on incompleted outgoing calls, reaching the called person or telephone, and calling the guest when the called person or number answers, obtaining from the telephone operator and reporting to the guest information regarding timing and charging for calls, placing calls and transmitting messages for guests in their absence—for example, the guest might call the operator and say, "Get John Jones on the phone", and then before he gets him he has to leave, and he says, "After you get him, give him this message", there are any number [fol. 270] of calls of that character—accepting charges on calls made by guests from points outside the hotel, and transferring charges to other subscribers, and many other miscellaneous services of a character normally perfor-ed by a secretary in a business or professional office.

In addition to these services, the hotels render services to their guests on incoming calls, such as taking and trans-

mitting messages—the guest of a hotel may leave and tell the operator, "I will be at one of the Government departments, or at some other hotel, or home, and if somebody calls me to tell him I will be there, or get the message and transmit it to me"—paging guests, taking messages from guests and transmitting them to business associates and friends calling in the absence of the guests.

Also furnishing general information to the guests, such as if a guest calls up the operator and asks her to locate somebody, or what is the state of the weather.

All of those things—and this is quite important—are services which the tariff of the telephone company prohibits the telephone company from rendering. For example, there is a filed tariff, which I assume will be offered, providing as follows:

"The Company will not transmit messages, but offers the use of its facilities, when available, for communications between parties, and will not be liable for errors in trans- [fol. 271] mission or failure to establish connections. Employees of the Company are forbidden to accept either oral or written messages to be transmitted over the lines of the Company."

In other words, practically all of these services to which I refer are services in addition to the services which the telephone company can render under its own tariff.

The Court: Very well, you have answered my question as to the nature of these services over and above the toll charge from here to New York, or some other State.

Now what is the basis on which you claim compensation for these services, these actual services? What base do the hotels use?

Mr. McGarraghy: As a rule, the hotels charge, on toll calls, 10 cents on all calls up to $1.00; and on calls over $1.00, they charge 10 percent of the call, with a maximum, the maximum varying in individual cases.

The Court: It is 10 percent of what the telephone company charges you?

Mr. McGarraghy: Yes, sir.

The Court: And then you collect the toll charge from the guest, and you add onto that 10 percent of the toll charge?

Mr. McGarraghy: Yes, Your Honor.

The Court: For these extra services you say the hotel renders?

Mr. McGarraghy: Yes, sir, that is right. And in [fol. 272] doing that, sir, we bill them separately to the guest. The voucher made in the telephone department shows the toll charge to be so much, the tax to be so much, and the service charge to be so much. And when it is billed to the guest, it shows two separate items, the telephone charge and our hotel charge.

The Court: Then you don't spread it out among all your guests, but you charge only those that use long distance calls?

Mr. McGarraghy: Well, so far as the long distance calls are concerned. As Mr. Plotkin says, it is not before the Court; but there is also a service charge on the local calls.

The Court: The long distance charges are before the Court.

Mr. McGarraghy: Yes, Your Honor. And Your Honor is correct that we have found, in our Judgment, the fairest way to do it is to charge it against the people who use the service, rather than spread it out among all the guests. But under this tariff we couldn't spread it out among all the guests. If the plaintiff is correct in its contention that we may not charge anything in addition to the toll charge, we couldn't even add it to our room charge, because it would still be a violation of the tariff. They would say that there is no vehicle, no means, by which we can collect this charge for this extra service. That would be the ultimate re- [fol. 273] sult of this tariff if it is sustained.

The Court: Do you think that, that you couldn't charge a guest for extra services?

Mr. McGarraghy: I think if this tariff is sustained in its present language as to apply to our present method of charging, even if we were not prohibited by the Rent Administrator from increasing our room rates and were free to spread this charge to our rooms, they could come in and say we were still violating the tariff by making even an indirect charge.

The Court: Do they make any such contention?

Mr. Plotkin: May I say on the record, Your Honor, that is not our position, and I don't think it is the position of the telephone companies either. Whether they want to raise or lower room rent is none of our concern at all.

Mr. Price: We disagree with Mr. McGarraghy about that. The language, I think, is that the use of the service shall not be made subject to any other charge, that is to say, that a man isn't to be charged something extra because he uses the service, in using the service. That is what the thing means, I am quite clear. It merely means that a charge attached to the use of the service is prohibited.

Mr. Plotkin: If I made a call from a hotel room and they charged me that 10 percent and wanted to call that 10 percent room rent, our position is that it makes no difference what you call this thing; but if they wanted to charge [fol. 274] $4.00 a day instead of $3.00 a day for a room, that is no concern of ours.

Mr. McGarraghy: Obviously you couldn't use the service until you had a room, and obviously you couldn't use the room until you paid for the room.

The Court: Couldn't you walk into the Mayflower and go into a booth and call up New York?

Mr. McGarraghy: Yes, Your Honor.

The Court: So you wouldn't have to be a guest.

Mr. McGarraghy: Yes, and you don't have to pay a service charge then.

I didn't emphasize that, and I am very glad Your Honor asked that question. In every hotel that is a party to this proceeding, there are telephone stations in the lobby connected directly with the telephone company, and the use of which involves only the toll charge of the telephone company, and there is no charge made by the hotel for that service. This charge that we are talking about relates to the use of telephones from guest rooms.

Mr. Plotkin: If I may point out, in the lobbies there are two types of telephones. One is where you dial the number yourself, that is connected directly to the telephone company. Some hotels also have——

The Court: (Interposing) You drop in all the coins you have.

[fol. 275] Mr. Plotkin: Yes, and then some. Some hotels have a department, like in the Union Station, that are connected to the hotel PBX. If you go into one of those booths, and they are always the most accessible, you have to pay the regular surcharge, the same as the guest does from his room.

The Court: You say surcharge?

Mr. Plotkin: The extra charges which are collected by the hotel over and above——

The Court: (Interposing) But you don't pay a surcharge in the Union Station, do you?

Mr. Plotkin: No, because that is maintained by the telephone company. But in the hotels they do have these attendants, and you pay not only the phone charges but the surcharges.

The Court: I thought Mr. McGarraghy said no.

Mr. McGarraghy: I said that in every hotel there are public telephone stations which do not necessitate going through the hotel switchboard at all, and on which there is no service charge of any kind. So that the public always has the opportunity, in every hotel that is a defendant in this case, of making a call without any service charge of any kind. And there are three hotels out of the total of 27 which, in addition to having public telephone stations, have a telephone switchboard operated by their own personnel, and if that is used there is a service charge for that extra service.

[fol. 276] The Court: Well, let's proceed with the testimony.

Have all counsel finished their opening statements?

Mr. Gordon: If the Court please, I represent the local company, but Mr. Price covered this situation for both.

Mr. Plotkin: Before we put on any witnesses, Your Honor, we have some tariffs which we would like to introduce in the record. They are certified copies of the tariffs, and I would just like to read the numbers off on them and put them in the record, if that is satisfactory to Your Honor and to counsel.

EVIDENCE ON BEHALF OF THE UNITED STATES

Mr. Plotkin: I am handing a tariff to the reporter which I would like to have marked for identification as Plaintiff's Exhibit No. 1.

(The document referred to was marked as Plaintiff's Exhibit No. 1 for Identification.)

Mr. Plotkin: Plaintiff's Exhibit No. 1 is Second Revised Page 6 to Tariff F. C. C. No. 3, issued by the Chesapeake & Potomac Telephone Company January 30, 1943, to be effective March 1, 1943. The second page is Second Re-

vised Page 8 to Tariff F. C. C. No. 132, issued by the American Telephone and Telegraph Company, Long Lines Department, January 26, 1943, effective March 1, 1943. The top page is an affidavit of T. J. Slowie, Secretary of the Fed-
[fol. 277] eral Communications Commission, who is the custodian of these tariffs.

I ask that this be admitted in evidence as Plaintiff's Exhibit No. 1.

Mr. McGarraghy: No objection.

The Court: If there is no objection, it will be admitted.

(The document referred to, marked as Plaintiff's Exhibit No. 1, was received in evidence.)

Mr. Plotkin: I ask the reporter to mark this next exhibit as Plaintiff's Exhibit 2 for Identification.

The Court: Why do you say "for Identification"? Then you have to go over it again and offer it in evidence.

Is the first one that I have here the one that you said "for Identification", and you have now offered it in evidence?

Mr. Plotkin: Yes.

The Court: Why take two bites at the cherry? Offer it in evidence now, and if there is any objection I will hear it.

Mr. Plotkin: Exhibit No. 2 is entitled PUC-DC No. 1. It is a tariff consisting of seven pages, filed by The Chesapeake & Potomac Telephone Company, and consists of the following:

Twenty-Third Revision of Sheet 1, issued April 1, 1944, effective May 1, 1944; Twentieth Revision of Sheet 2,
[fol. 278] issued April 1, 1944, effective May 1, 1944; Sixteenth Revision of Sheet 3, issued April 1, 1944, effective May 1, 1944; Eighteenth Revision of Sheet 4, issued April 1, 1944, effective May 1, 1944; Tenth Revision of Sheet 5, issued June 21, 1943, effective July 1, 1943; Seventeenth Revision of Sheet 6, issued August 19, 1938, effective September 1, 1938; Fifth Revision of Sheet 7, issued April 1, 1944, effective May 1, 1944.

I offer that in evidence as Plaintiff's Exhibit 2.

Mr. McGarraghy: If Your Honor please, I object to the part of the exhibit which is marked Eighteenth Revision of Sheet 4, cancelling the Seventeenth Revision of Sheet 4, which as I understand it is a statement of the charges on local calls, and to the extent that it relates to local calls I object to it.

The Court: Where is that?

Mr. McGarraghy: It is the fourth sheet. To the extent that it relates to local calls, I think it is immaterial.

The Court: Is that agreeable that that go out?

Mr. Plotkin: I think it would be much more helpful if we could have in these entire tariffs. I think the record would look rather strange if we had a complete tariff except for page 4.

The Court: You don't want all of page 4 to go out?

Mr. McGarraghy: Just that part which relates to tariff on local calls.

[fol. 279] The Court: That will be admitted, with the understanding that the reference on page 4 to local tariffs is regarded as immaterial to the issues in this case. Does that cover it?

Mr. McGarraghy: Yes.

Mr. Plotkin: Page 4 is the charge for the installation, the per-month charge for the use of this equipment. I think you are referring to another page. Isn't it page 3 to which you are referring?

Mr. McGarraghy: I am sorry, I was referring to page 3 of the tariff, Your Honor.

The Court: Then the same ruling of the Court, with the consent of counsel for all parties, will apply to page 3 of Exhibit 2 of the Plaintiff, namely, that the references on that page to the local calls is regarded as immaterial to the issues in this case.

Mr. Plotkin: With respect to page 4, the ruling is deleted, is that right, Your Honor?

The Court: That is right.

(The document referred to, marked as Plaintiff's Exhibit No. 2, was received in evidence.)

Mr. Plotkin: Plaintiff's Exhibit No. 3, entitled PUC-DC No. 6, filed by The Chesapeake & Potomac Telephone Company, the heading of the tariff is Business and Residence [fol. 280] Service—Application of. It consists of the First Revision of Sheet No. 1, issued December 14, 1915, effective February 1, 1916.

I offer it in evidence as Plaintiff's Exhibit No. 3.

The Court: If there is no objection, it is received in evidence.

(The document referred to, marked as Plaintiff's Exhibit No. 3, was received in evidence.)

Mr. Plotkin: Plaintiff's Exhibit No. 4 is PUC-DC No. 13, entitled Private Branch Exchange Service. The tariffs are filed by The Chesapeake & Potomac Telephone Company, and consist of 6 sheets as follows: Seventh Revision of Sheet 1, issued October 20, 1937, effective November 1, 1937; Seventh Revision of Sheet 2, issued May 29, 1941, effective June 10, 1941; Second Revision of Sheet 3, issued June 21, 1943, effective July 1, 1943; Original Sheet 4, issued October 20, 1937, effective November 1, 1937; Original Sheet 5, issued October 20, 1937, effective November 1, 1937; Original Sheet 6, issued October 20, 1937, effective November 1, 1937.

I offer that in evidence as Plaintiff's Exhibit 4.

The Court: Whenever an exhibit is offered in evidence, let it be understood it is received in evidence unless there is expressed objection. That saves the Court from talking too much, and counsel from talking too much.

[fol. 281] (The document referred to, marked as Plaintiff's Exhibit No. 4, was received in evidence.)

Mr. Plotkin: Plaintiff's Exhibit No. 5 is PUC-DC No. 3, called Applications for Service, filed by The Chesapeake & Potomac Telephone Company, the tariff consisting of three sheets as follows: Fourth Revision of Sheet 1, issued July 20, 1943, effective August 1, 1943; Fifth Revision of Sheet 2, issued October 20, 1937; effective November 1, 1937; Second Revision of Sheet 3, issued March 22, 1937, effective April 1, 1937.

I offer it in evidence as Plaintiff's Exhibit No. 5.

(The document referred to, marked Plaintiff's Exhibit 5, was received in evidence.)

Mr. Plotkin: Plaintiff's Exhibit No. 6 is PUC-DC No. 19-A, a tariff filed by The Chesapeake & Potomac Telephone Company, entitled Service Connection Charges. The tariff consists of 3 sheets as follows: Sixth Revision of Sheet 1, issued May 4, 1933, effective June 1, 1933; Sixth Revision of Sheet 1-A, issued March 15, 1939, effective April 1, 1939; and First Revision of Sheet No. 2, issued May 20, 1922, effective June 1, 1922.

I offer that in evidence as Plaintiff's Exhibit No. 6, Your Honor.

[fol. 282] (The document referred to, marked Plaintiff's Exhibit 6, was received in evidence.)

Mr. Plotkin: Plaintiff's Exhibit No. 7 is a tariff consisting of 9 sheets, entitled PUC-DC No. 22, Supplemental Equipment, filed by The Chesapeake & Potomac Telephone Company. The pages are as follows: Eighth Revision of Sheet 1, issued October 20, 1937, effective November 1, 1937; Ninth Revision of Sheet 2, issued November 29, 1935, effective December 1, 1935; Twelfth Revision of Sheet 3, issued March 15, 1939, effective April 1, 1939; Sixth Revision of Sheet 4, issued September 5, 1940, effective September 16, 1940; Original Sheet No. 5, issued September 8, 1931, effective October 1, 1931; Third Revision of Sheet 6, issued February 4, 1938, effective February 15, 1938; Second Revision of Sheet 7, issued May 1, 1939, effective May 15, 1939; Second Revision of Sheet 8, issued November 29, 1935, effective for new services December 1, 1935, and for existing services on the several billing dates December 1, 1935, to December 26, 1935; First Revision of Sheet 9, issued October 20, 1937, effective November 1, 1937.

I offer this in evidence as Plaintiff's Exhibit No. 7.

(The document referred to, marked as Plaintiff's Exhibit 7, was received in evidence.)

[fol. 283] Mr. McCollester: May we understand, Mr. Plotkin, that all of the tariffs, Exhibits 1 to 7, which you have offered, are currently in effect, according to the records of the Commission?

Mr. Plotkin: According to the records of the Public Utilities Commission of the District of Columbia, these are the tariffs that are in effect. We checked them just a day or two ago.

As our first witness, Your Honor, we would like to call Mr. McCoy.

Thereupon,

DAVID E. McCOY, a witness appearing for and on behalf of the United States, having been first duly sworn, testified as follows:

The Clerk: Give your full name.

The Witness: David E. McCoy.

Direct examination.

By Mr. Plotkin:

Q. Will you give your full name, please?

A. David E. McCoy.

Q. Where do you work, Mr. McCoy?

A. With The Chesapeake & Potomac Telephone Company.

Q. What position do you hold?

A. General Commercial Manager.

Q. How long have you held that position?

[fol. 284] A. About 4½ years.

Q. And what other positions have you held with the Telephone Company?

A. Prior to my present position I was General Commercial Engineer for approximately 7 years; General Commercial Supervisor for 2 years prior to that; and numerous other jobs in the Commercial Department, my service having started in December of 1921.

Q. In The Chesapeake & Potomac Telephone Company in the District of Columbia?

A. That is correct.

Q. Did you have any other positions with other telephone companies?

A. No, all of my service has been with The Chesapeake & Potomac Tleephone Company in Washington.

Q. You stated that you are the Commercial Manager?

A. The General Commercial Manager.

Q. Will you please describe what your functions include?

A. Well, I am the head of the Commercial Department, whose functions are those of a general business nature, with customers and the public. We handle applications for telephone service; we handle complaints in connection with service; we issue the telephone directory; we handle the collection from coin box telephones; and advertising—those [fol. 285] things that are normally considered the business functions of a concern.

Q. Are you familiar with the PBX installations which connect the telephone company and the various hotels in the District of Columbia?

A. Yes, I am.

Q. Would you give a brief description of that arrangement, please?

A. Well, the installation consists of a private branch exchange switchboard, which is connected by trunk lines to the telephone company's central office, and in some cases connected also by toll terminal trunk lines which are connected directly to the telephone company's toll office.

Q. Would you explain the difference between a trunk line and a toll terminal trunk line?

A. Well, a trunk line is similar to any subscriber's line. It goes to the central office, into the dial equipment, where it is dialed, and it is exactly the same kind of a line that you have from your home when you have a home telephone. It connects to the local central office.

The toll terminal trunk line, however, that is installed in many PBX's, not only in hotels but all kinds of PBX's, runs directly to the telephone company toll office where long distance service is handled.

Q. Is that the office that we get when you dial 211?

A. Yes, sir.

[fol. 286] Q. And that is a direct connection?

A. Yes.

Q. Proceed, please.

A. The system also consists of extension stations, telephones, that is, located in various places in the hotels, in the guest rooms and some in the lobbies and corridors and restaurants. Also in a number of management stations for the management and the staff of the hotel. All of these extension stations are connected to the PBX by extension lines.

Q. When a hotel desires PBX service, do they file application for that with your company?

A. Yes, sir.

Q. And is that handled by your division?

A. That is right.

Q. Will you please describe the steps that are gone through, and any documents that have to be filed in that connection?

A. Well, the hotel applies to the telephone company for service. Assuming that it is a new hotel, we would get such information as to the size of the hotel, how many rooms, and so forth, and the hotel would tell us what service they wanted, how many positions for the switchboard; how many trunk lines; how many toll terminals, if they wished them; how many extension stations, and where they wanted them.

[fol. 287] located; and so on—all of the information as to what they wanted in the way of service.

Q. You said so many "positions". What do you mean by "positions"?

A. A private branch exchange switchboard may be one or more positions, a position being the section of the board which one operator operates. In a large hotel, for instance if you had enough business to require 10 positions, that would mean that 10 operators could operate that board at the same time.

Q. Are there different types of PBX boards?

A. There are numerous types. The two principal classifications are manual and dial, manual switchboards and dial switchboards.

Q. What is the difference between a manual and a dial switchboard?

A. In a dial switchboard, the extension station users can dial other extensions connected to the same switchboard. In the case of a manual switchboard, the connections are handled manually by the operators at the PBX board.

Q. What type of switchboards do the 27 hotels use, do you know?

A. The 27 hotels have manual switchboards.

Q. All of them are manual?

A. Well, there is one exception—well, it has a manual [fol. 288] switchboard, but in addition to that it has a dial or intercommunicating board for the management of the hotel itself.

Q. Are you familiar with the switchboard at the Shoreham hotel?

A. In a general way.

Q. What type of switchboard is that?

A. That is a manual switchboard.

Q. That is a manual switchboard?

A. Yes.

Q. Do you know how many positions it has?

A. I think I can tell you by consulting my records.

Q. Will you do so?

By the way, do you have a copy of the contract between the Shoreham Hotel and the Telephone Company with respect to the installation of the switchboard and other equipment there?

A. I have a copy of the service application card.

Q. May I see that, please?

(Handed to Mr. Plotkin.)

Q. Do you have an extra copy of that?

A. I have one photostatic copy only remaining, and if you want me to tell you anything from the card I will have to keep this one.

Mr. McGarraghy: Do you have one that is signed, Mr. McCoy?

[fol. 289] The Witness: No, we do not in this case, Mr. McGarraghy. The signed application card has become lost in the past years, and we were unable to locate it.

Mr. McGarraghy: How did you make this up, then?

The Witness: This was made up in 1936, I think it was 1936, as the result of a physical check made of the equipment in the hotel at that time.

Mr. McGarraghy: In other words, you put on the card the equipment that is there, but you don't know that this is in fact a copy of the application that was filed by the Shoreham Hotel?

The Witness: No, we do not.

This is the equipment that was there at that time, and has been billed for since then, and the billing has been accepted by the hotel and the bills have been paid.

Mr. McGarraghy: I object to it as a contract. I have no objection to the statement that the card does show the service and equipment that is in the Shoreham Hotel. I am perfectly willing to have it come in on that score.

The Court. Mr. McGarraghy, you object to it as not being the contract between the Telephone Company and the Shoreham Hotel?

Mr. McGarraghy: I would like to save time if I can, and if I can satisfy myself that this is the contract that the hotels generally have, I won't offer any technical objection [fol. 290] to it.

The Court: The Court won't accept it as the contract between the hotel and the telephone company, because it isn't. It is neither the original nor a copy of it, but it is offered in evidence as showing what the telephone company, on inspection of the hotel in 1936—it was in 1936, was it?

The Witness: July 10, 1936.

The Court (Continuing): —showing what the equipment actually in the hotel at that time was, and that on that basis you billed the hotel from that time up to the present time, and they accepted the bills based on that statement.

The Witness: On that basis, subject to other changes as time has gone on, yes, sir.

The Court: Do you object to it being in evidence under that situation?

Mr. McGarraghy: No, Your Honor.

Mr. Plotkin: We don't want to offer it for that purpose, Your Honor. We have agreed with counsel that instead of putting on all of the 27 hotel managers, we will put on a case with respect to the Shoreham, and we will stipulate for the record that the facts with respect to the other hotels are substantially the same. We agreed on the Shoreham, and we are in the unfortunate position that on the one we agreed to use, we can't find the signed contract. If Mr. McGarraghy will stipulate that for the purposes of this [fol. 291] case only, and for no other purposes, this is the contract——

The Court: The Court wouldn't let him do that. The witness admits that this isn't a copy of the contract, it isn't the original contract; and the Court, even should all counsel agree to it, isn't going to receive it in evidence when the Court knows it isn't right. The Court will receive it in evidence for just what it is, a statement made up by the telephone company of the actual equipment, service, and so on, at the Shoreham Hotel in 1936, and since that time there have been modifications or changes. If you want to let the case of the Shoreham rest there, and take some other hotel, if you have an original contract, you may do so. But you can do as you see fit.

Mr. Plotkin: May I offer these four sheets, Your Honor, in evidence as Plaintiff's Exhibit No. 8, on the basis of Your Honor's ruling?

The Court: Very well.

(The 4 sheets referred to, marked as Plaintiff's Exhibit 8, were received in evidence.)

By Mr. Plotkin:

Q. Do you have any signed applications from any of the other defendant hotels?

A. Yes, sir.

Q. Do you have the one for the Mayflower?

[fol. 292] A. There are several of the 27 that we do not have the signed application card for, but we have a number of them. We do not have it for the Mayflower.

Q. Which ones do you have there?

A. We have it for the Annapolis.

Q. May I have that one, please?

(Handed to Mr. Plotkin.)

Mr. Plotkin: This is an application for telephone service at the Washington Exchange between the Annapolis Hotel and the Chesapeake & Potomac Telephone Company, and I offer it in evidence as Plaintiff's Exhibit No. 9.

The Court: What is the date of it?

Mr. Plotkin: January 6, 1936, Your Honor.

The Court: If there is no objection, it will be received.

Mr. McGarraghy: No objection.

(The document referred to, marked Plaintiff's Exhibit 9, was received in evidence.)

By Mr. Plotkin:

Q. Referring back now to the application of the Shoreham Hotel, which is Exhibit No. 8, will you just describe generally what is contained on the various sheets of that exhibit?

Mr. McGarraghy: If Your Honor please——

[fol. 293] The Court: That isn't a fair question, because Exhibit 8 isn't the application of the Shoreham Hotel.

By Mr. Plotkin:

Q. Will you please describe the type of equipment that the Shoreham Hotel has, according to your records?

The Court: The Shoreham Hotel?

Mr. Plotkin: Yes, we are going to put on our case with respect to the Shoreham.

The Witness: The Shoreham has a 6-position switchboard with 39 trunk lines; 2 auxiliary lines; 855 stations; 204 directory listings; 2 mine sets; 2 wiring plans 203-A; 8 buzzer circuits; 4 gongs; 29 bells; a 4-line conference equipment; one booth; two additional stations; one lamp indicator; 8 operator sets; 11 long distance terminal loops, or trunks; 7 wiring plans 203; and 600 feet of mileage for an off-premise station.

By Mr. Plotkin:

Q. Does Exhibit No. 8 show the installation charges and the monthly charges with respect to that equipment, or what does it show?

A. No, it does not, because this was the equipment that was in service at a given time.

Q. Do you have any other signed applications with the other hotels?

A. In addition to the Annapolis?

[fol. 294] Q. In addition to the Annapolis, yes.

A. I have one for the Carlton Hotel.

Q. May I have that?

(Handed to Mr. Plotkin.)

A. I have one for the Carroll Arms.

Q. May I have that?

(Handed to Mr. Plotkin.)

A. I have one for the Hotel Continental; one for the New Colonial; the Hamilton; Hay-Adams; Lafayette; Martinique; Pennsylvania; Raleigh; Roger Smith; Statler; Sheraton; Washington; Willard; Fairfax; 2400-16th; and Wardman Park.

(All handed to Mr. Plotkin.)

Mr. McGarraghy: May I ask you, Mr. McCoy—there are four cards here that are pink, and apparently have different terms on them than these other white ones. What is the difference?

The Witness: That is an obsolete type of card, Mr. McGarraghy, that was used a number of years ago, and contained, in addition to the clause which is now on the white card, also a reference to it being a 5-year contract for a multiple switchboard. That provision for the 5-year contract in the case of a multiple switchboard is a part of our tariffs, and we discontinued the use of that salmon card which had that express provision on it. The white card is the one that is used now in all cases of PBX service.

[fol. 295] Mr. Plotkin: I would like to offer these as a series of exhibits. I will identify them.

The application of the Wardman Park Hotel, dated February 18, 1933, offered as Plaintiff's Exhibition No. 10.

Mr. McGarraghy: I have no objection to any of these.

Mr. Gordon: If the Court please, these are original records, and we have no objection to their going in evidence, but may we substitute photostatic copies for them afterwards?

The Court: After this Court is finished with the case, you may do so.

Mr. Gordon: Thank you. I had in mind that it might go to the Court of Appeals——

The Court (Interposing): You attorneys can take care of that.

Can't you just offer all those in evidence and let them be marked seriatim, beginning with Plaintiff's Exhibit No. 10?

Mr. Plotkin: All right.

The Court: The Clerk can mark them and hand them to the stenographer.

Mr. Plotkin: Shall I read them into the record, the identification?

The Court: The names have all been given by the witness. It will save a lot of time——

The Witness: (Interposing) I think they were in alpha-[fol. 296] betical order, Your Honor.

The Court: Disregard the designation of Exhibit No. 10 on the Wardman Park exhibit, and number them seriatim beginning with Exhibit No. 10, in the order the witness named them.

(The documents referred to were marked as Plaintiff's Exhibits Nos. 10 to 27, both inclusive, respectively, and received in evidence.)

By Mr. Plotkin:

Q. Returning to the situation at the Shoreham, Mr. McCoy, so far as your check shows the equipment that you read, the list of equipment that you read into the record, is all the telephone equipment maintained at the Shoreham Hotel?

A. Well, that is the equipment that was in place at the time we made the check.

Q. When was that check made?

A. 1936.

Q. And as new equipment has been added, would that be put on that card?

A. It would be put on supplemental cards.

Q. Did you also read the supplemental cards?

A. No, but that merely shows the connection of new [fol. 297] trunks or new stations, or the disconnection of trunks and stations, and in the case of a large PBX there may be 30 or 40 or 50 supplemental cards. They are very quickly filled up, and it is a massive record.

Q. Is all the equipment at the Shoreham Hotel owned by the Chesapeake & Potomac Telephone Company?

A. All of the telephone equipment.

Q. Telephone equipment, excuse me. It is installed by the Chesapeake & Potomac Telephone Company?

A. Correct.

Q. And it is maintained and repaired by you, also?

A. Yes, sir.

Q. If there is any equipment that gets out of order, or anything goes wrong between the PBX and the extension telephones located in the rooms, who repairs that?

A. The telephone company.

Q. When a guest in a hotel, at any of the 27 hotels desires to make a long distance telephone call, how is that handled with respect to the telephone company?

A. Assuming the guest is in his room, he uses the telephone that is located in the room, which is connected by an extension line to the PBX; he lifts the receiver and that signals the operator on the hotel PBX, and she answers his signal; then he either asks for Long Distance or gives the details of the call that he wants to make to the hotel [fol. 298] operator. If he asks for Long Distance and the hotel operator connects him directly with Long Distance, either over a regular trunk line or over the toll terminal trunk line, he gives the information to our toll operator; assuming the call is to New York, for example, the toll operator, having the information necessary, completes the connection from her switchboard to what is called the toll terminal switchboard, where direct circuits are available to a great many cities, outside of Washington,—the toll terminal switchboard operator completes the connection to New York, and through the New York operator completes the call that the guest at the Shoreham has placed, and he proceeds to talk if he reaches the station or person.

Q. What happens when the call is completed?

A. Let me say this, first. When the conversation is started, then our toll operator starts the time of connec-

tion, and when the call is completed she completes timing the length of connection and calculates the time and then computes the rate for that call.

Q. How does she compute the rate?

A. She has a record of frequently called points which shows the rates on it.

Q. The tariff rates? When you say "rates", do you refer to tariff rates?

A. All of these are tariff rates.

[fol. 299] Q. On file with the Federal Communications Commission?

A. Yes, sir.

If the record that the toll operator has does not include the particular point involved, she goes to a rate operator to get it. She only has the rates for frequently called points. Having computed the rate, the operator calls back the Shoreham Hotel operator and gives her the time and charges for that particular call.

Q. Is that the same with respect to all hotels?

A. Yes.

Q. The same procedure?

A. Yes.

Q. You were describing, so far, the calls where the guest himself called the long distance operator?

A. That is right. If he gave the details of the call that he wanted to make to the hotel operator, she would do exactly the same thing for him that he did for himself in the first instance. She would get long distance, pass the details of the call to the long distance operator, and then the call would be handled in identically the same way from there on.

Q. You say the "details of the call"—what are the details of the call?

A. The city you want; the telephone number, if you know it; the person that you want if it is a person-to-per-[fol. 300] son call; or the address that you want if it is a station-to-station call.

Q. If the guest calls the hotel operator and doesn't know the telephone number, does the hotel operator look up the telephone number or just pass on the information that the guest gave her?

A. I don't know what the hotel operator does in that case. We do have, filed with us, calls where the calling party does not know the number, in which case we go

ahead and complete the connection by getting the number ourselves; but whether the hotel operator does anything on it, I don't know.

Q. And you say that the guest may either give the information to the hotel operator or may be connected directly to your long distance operator to give her the information?

A. That is right.

Q. When the charge is calculated by your telephone operator, and she calls back the telephone operator at the hotel and advises her of the charge, what happens with respect to the calculation that your operator made with respect to the charge?

A. The record is called a toll ticket, on which she enters the information originally as to where the call is to, and so forth, and the time and the rate are entered on that [fol. 301] same ticket. The ticket is later sent to the accounting department of the telephone company, and is used for the preparation of the bills.

Q. Is that toll ticket checked?

A. Yes.

Q. By whom?

A. The toll tickets, where rates are quoted, are checked by the accounting department.

Q. What happens if there is any discrepancy or mistake shown on that toll ticket?

A. You mean if the rate originally quoted is found to be erroneous?

Q. That is right.

A. The hotel is called back and told that the rate was erroneously quoted, and that it should be whatever the correct amount is.

Q. And how soon is that done after the call is placed or completed?

A. Well, it is done usually at least within 24 hours, and sometimes within a very short time.

Q. But generally within 24 hours?

A. Yes.

Q. What is the obligation of subscribers in general with respect to long distance calls made from their instruments, or collect calls received at those instruments—who is re- [fol. 302] sponsible for the payment of those charges?

A. Normally the subscriber is responsible for any mes-

sages sent over his telephone, or any collect messages received for which he has agreed to accept the charges.

Q. Are there any exceptions to that?

A. There is an exception, yes. In our tariffs there is a provision which applies to transient hotels. The provision states that the hotel is responsible for collecting from, and remitting to the telephone company on calls from, its guests, the charges covered by calls so made.

Q. Is the provision you are referring to contained in PUC-DC No. 13, in paragraph 6, under "A"? That is Exhibit No. 4 of the Plaintiff.

A. PUC-DC No. 13, Sheet 2, Paragraph 6—that is correct.

Q. And if a long distance call is made, prepaid, from a hotel room, or received collect, and the guest skips and doesn't pay the bill——

Mr. McGarraghy: (Interposing) I object, I think the tariff speaks for itself as to what its application is.

Mr. Plotkin: May I finish the question?

The Court: Suppose you finish the question, or start over again and finish it.

By Mr. Plotkin:

Q. If a guest of a hotel makes a call prepaid, or receives [fol. 303] one collect, and then doesn't pay the charges, is the hotel required to pay you the charges for that call?

Mr. McGarraghy: I object. The tariff covers the subject.

The Court: I think it covers the subject. Why ask this witness?

Mr. Plotkin: Well, this isn't a bi-lateral contract, it is a uni-lateral statement in a tariff. There have been disagreements as to the exact meaning of that, and I think the telephone company is competent to say what they understand that to mean, because they are the ones that have to collect for the service.

The Court: I think we will let the tariff itself stand. What this witness may think it means wouldn't be binding on the Court or on the parties in this case. The objection is sustained.

Mr. Plotkin: We have no further questions at this time, Your Honor. We may want to recall the witness after

some of the hotel people testify, in the light of some of their testimony.

Mr. Gordon: May we have two or three minutes to look at our notes? We may develop his testimony a little more, or we may drop it and call him on our own case. If we can just confer for a moment, we will decide what to do about that.

[fol. 304] The Court: Very well.

Mr. McGarraghy: Do you want me to proceed now, Your Honor? I am ready to proceed.

The Court: Did I understand Mr. Gordon to say that you may call this witness as one of your own?

Mr. Gordon: We were going to look over our notes, and if his testimony is substantially what we would have asked him anyway, we would ask a few more questions and finish up with him at this point. If we find we have a great deal to ask him, we may wait until we put on our own case.

Mr. McGarraghy: Don't you think I should reserve my cross-examination, then?

Mr. Gordon: Why don't you go ahead? You may bring some more of it out.

The Court: That may be, but what the Court is considering is this: We have got 30 defendants here, and the plaintiff, and the Court isn't going to sit here and have one witness put on by one party, and wait until later on and have him put on by another party, and then wait and have him put on by another party. That would draw this case out to two or three times the length of time that ought to be allotted for trial. So the Court is going to follow the rule here, as far as possible, that when a witness goes on the stand—there is no jury here, counsel are all experienced in the law—that when a witness goes on the stand we are [fol. 305] going to finish with him, and that applies also to the Government. The Government counsel undertook to say, "Well, we may recall him later." No, this Court isn't going to follow rules like that, or we would never get through.

When the Government puts a witness on the stand, finish with him. When the other parties in the case cross-examine him, even if it is in your case-in-chief somewhere, finish with him.

Mr. Gordon: That is agreeable.

The Court: Very well. It is understood that the Government is finished with this witness, and the same way with

your cross-examination and with the telephone companies' cross-examination.

Mr. Price: We may want to ask for one slight exception to that, Your Honor, in this respect: The Government has put in a considerable number of tariffs here, a voluminous lot of material, and we weren't even given copies of it. Now there are a number of tariff provisions that we want to get in that are material to our case, and until we can check to see what they have put in we don't know whether we have got everything in that we want in or not.

The Court: You can do that during the noon recess.

Mr. McGarraghy: I doubt if I should cross-examine this witness until the telephone companies, if they are going to use him as a witness-in-chief, have done so. I think the [fol. 306] telephone company should proceed.

Mr. Gordon: We will do that.

The Court: I announced the rule, and this Court is going to follow it. This court isn't going to take two or three bites of any cherry—I am not over-fond of cherries, anyway. Whenever a witness is on the stand, each of the parties must complete whatever you have got to ask him. That is the only way to proceed.

We will take a recess now until half-past one; and here are the original exhibits, and you can check upon them, Mr. Gordon, and get ready for your cross-examination at half-past one.

(Thereupon, at 12:10 o'clock p. m., a recess was taken until 1:30 o'clock p. m., of the same day.)

[fol. 307] Afternoon Session

(The trial was resumed at 1:30 o'clock, p. m., pursuant to recess.)

Thereupon David E. McCoy, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

The Court: The direct examination of this witness is finished?

Mr. Plotkin: Yes, the direct examination is finished, your Honor.

Cross-examination:

Mr. Price: I should like to offer as Exhibit 28, if the exhibits are to be numbered successively——

The Court (interposing): No, the Plaintiff's Exhibits go to Exhibit 27, so far. Your exhiibts would be on behalf of the telephone companies.

Mr. Price: Very well. I will offer as Telephone Companies' Exhibit No. 1, then, a page of the American Telephone & Telegraph Company—Long Lines Department, Tariff FCC No. 132, being Third Revised Page 6.

The Court: Of course that would be a little out of order, but if counsel for all parties don't object that may be offered at this time. You are putting that in on behalf of the defendant telephone companies?

[fol. 308] Mr. Price: Yes, your Honor.

The Court: Of course you really should wait until the plaintiff has completed his case. But there is no objection, is there, to this being out of order?

Mr. Plotkin: No, your Honor.

Mr. Price: We only have a few tariff sheets——

The Court (interposing): They can be admitted in evidence a little out of order.

Mr. Gordon: They have to do with what this gentleman has to testify about, you see.

The Court: Very well—that will be following out the suggestion of the Court.

Mr. McGarraghy: If your Honor please, I said I didn't object to it being offered, but I do object to it as immaterial. It does not relate to this case at all——

The Court: Suppose we admit it in evidence subject to the right of any of the parties, at the close of the case, to move that it be stricken out. So it is admitted subject to the right of any of the parties to object to it at the conclusion of the case.

(The document referred to, marked as Telephone Companies' Exhibit No. 1, was received in evidence.)

Mr. Price: I may state that the purpose of this and the following exhibit is to show that the defendant American [fol. 309] Telephone & Telegraph Company, concurs in the tariffs of the associated operating companies, one of which is The Chesapeake & Potomac Telephone Company. It is

merely to connect up the American company with the tariff provisions of the other companies.

For that same purpose I offer as Telephone Companies' Exhibit No. 2 another page of the same FCC No. 132 Tariff, being First Revised Page 10-A.

(The document referred to, marked as Telephone Companies' Exhibit No. 2, was received in evidence.)

By Mr. Price:

Q. Mr. McCoy, have you copies of pages 7, 9 and 11-A of the Chesapeake & Potomac Telephone Company's Tariff FCC No. 3?

A. Yes sir.

(The documents referred to were handed to Mr. Price by the witness.)

Mr. Price: I now offer as Telephone Companies' Exhibit No. 3 a sheet of the Chesapeake & Potomac Telephone Company's Tariff FCC No. 3, being First Revised Page 7.

(The document referred to, marked as Telephone Companies' Exhibit No. 3, was received in evidence.)

Mr. Price: I offer, as Telephone Companies' Exhibit [fol. 310] No. 4 another sheet of the same Tariff, being Original Page 9.

(The document referred to, marked as Telephone Companies' Exhibit No. 4, was received in evidence.)

Mr. Price: I offer as Telephone Companies' Exhibit No. 5 another sheet of the same Tariff, FCC No. 3, being Original Page 11-A, containing Paragraph B-14, the provision in regard to the use of the message toll telephone service at hotels, apartment houses and clubs, which is the subject of this proceeding.

Mr. Plotkin: We have no objection to that, but that is already attached to the complaint and I was wondering if we could save ourselves an exhibit by not having this one offered?

The Court: I think it had better be put in as an exhibit. Have the exhibits attached to the complaint been offered?

Mr. Plotkin: We attached them as exhibits to our complaint, and they were admitted. Is there any further need of offering them for the record?

The Court: If they are annexed to the complaint they are part of the pleadings, but that doesn't necessarily put them in evidence. You may later offer those exhibits, if you desire to do so.

(The document referred to, marked as Telephone Companies' Exhibit No. 5, was received in evidence.)

[fol. 311] Mr. McCollester: May I inquire of Mr. Price if these tariff provisions which he has just offered are currently in effect?

Mr. Price: Yes, they are.

By Mr. Price:

Q. Mr. McCoy, will you answer Mr. McCollester's question?

A. That is correct, yes sir.

Q. In order that we may understand the relation of the two defendant telephone companies to this matter, Mr. McCoy, will you tell us briefly how they participate, respectively, in this interstate message toll service, and whenever I speak of this as "interstate service" I mean to include also "interstate and foreign."

A. Interstate message toll service is furnished jointly by The Chesapeake & Potomac Telephone Company and other telephone companies with which our lines connect. A very large volume of this traffic, what is normally called long-distance service, which originates or terminates in Washington, is furnished jointly by The Chesapeake & Potomac in Washington and the American Telephone & Telegraph Company.

The American company has a very extensive system of long-distance lines all over the country, and they are used and operated for the purpose of connecting the territories of the several associated companies in the Bell System.

There is another substantial volume of toll calls, what [fol. 312] we call short-haul toll business, that is to the nearby States, Maryland, Virginia and West Virginia, and that service is furnished jointly by the Chesapeake & Potomac in Washington and the Chesapeake & Potomac companies in those other three states, Maryland, Virginia and West Virginia.

Q. Then in all cases, if I understand you, this interstate toll service involves the lines and the services of the de-

fendant Chesapeake & Potomac Telephone Company, and another company or other companies, is that correct?

A. That is correct, yes sir.

Q. And with respect to a large part of it, one of those companies involved is the American Telephone & Telegraph Company?

A. Right.

Q. Now there being more than one telephone company involved in handling one of these calls, will you tell us with what company or companies the subscriber or person placing the call, deals in the matter?

A. The subscriber or calling person aways deals with the local operating company at the point at which he originates the call. In other words, in the case of someone making a call from Washington, all of his transactions are with the Chesapeake & Potomac here in Washington.

Q. And that applies, does it, to calls originating at the defendant hotels here?

[fol. 313] A. Yes sir.

Q. Well, now, who receives the revenue for the call?

A. The revenue is received by the local telephone company. The Chesapeake & Potomac Telephone Company.

Q. In the case of calls from Washington?

A. Yes.

Q. And is it true that in all cases the revenue is received by the operating company——

A. (Interposing:) By the local operating company.

Q. (Continuing:) —at the point where the call originates?

A. That is right.

Q. In a word, what is done with that revenue, as between the different companies involved?

A. The revenue is later divided between the companies which participate in handling the call, through contractual arrangements, whereby recognition is given to the amount of facilities used by each of the companies involved, and their operating costs.

Q. Of course the tariff provisions are on file, but these interstate calls involving the services and facilities of two or more companies are governed by the interstate tariffs which are filed with the Federal Communications Commission—is that correct?

A. That is correct.

[fol. 314] Q. And are such tariffs filed both by the American Telephone & Telegraph Company and by the associated companies of the Bell System, including the Chesapeake & Potomac Telephone Company?

A. Well, each company concurs in the other tariffs. The interstate tariffs of the Chesapeake & Potomac, for example, do not cover all long distance rates specifically, but by a concurrence in the FCC tariffs, they, in effect, adopt those same tariffs as part of their own tariffs.

Q. And that concurrence is what we were seeking to show by our Exhibits 1 and 2, just introduced, is that correct?

A. That is right.

Q. I want to ask you if you want to correct that answer. Didn't the two exhibits just introduced, Nos. 1 and 2, show the concurrence the other way, namely, the concurrence of the American Company in the Chesapeake & Potomac Telephone Company's tariffs?

A. Those were Long Lines tariffs, correct, and that was a concurrence in the Chesapeake & Potomac tariffs.

Q. But the fact is that both companies concur in the tariffs of the other?

A. That is right.

Q. I am not sure that it was made clear this morning, so merely for clarification I want you to go over again the problem of the coin box telephones in the lobbies of the [fol. 315] hotels. Did you explain that there might be two different types of those facilities, and what they were?

A. No, I gave no testimony at all on the matter of coin box service, Mr. Price.

Q. I guess I am thinking of the discussion had between counsel about that.

Just to clarify that for a moment, what is the fact about that?

A. There are two types of coin box service. One is called public telephone service. That is a service that is installed in public places by the telephone company upon its own initiative, having to first secure, of course, the permission of the owner or occupant of the premises to put such telephones there. Those telephones are connected directly with the telephone company's central office.

We also have a type of subscriber service which is called semi-public service, which uses the identical equipment that public telephones use, but semi-public telephones are installed in places of not such a public character. As the

name implies they are semi-public, and it is a combination use of the subscriber for his own business, plus casual members of the public that may come in to use the telephone.

Q. I was thinking not of that but of some instances that were referred to where the hotel might have a pay station of its own, so to speak, in the lobby. Will you tell us about [fol. 316] that?

A. There are two ways that that may be done, and is done. The hotel may have a small switchboard, not part of the regular PBX service of the hotel that we were speaking of this morning, but a separate switchboard just for the purpose of rendering telephone service to casual members of the public or guests of the hotel in the lobby, or whatever the case may be. Telephones that are connected to that small attended PBX are usually located in booths which are right in the same vicinity. They don't usually have coin boxes on them. The hotel employee who operates the switchboard and makes the calls for the people using those telephones, collects the charges for those calls direct from the user.

Q. And who fixes the amount that that attendant collects?

A. The hotel fixes the amount that they collect from the users. We charge our regular rates for calls that are made, as far as the telephone company is concerned; we charge the hotel the tariff rates.

Q. Do those calls pass out to the telephone central office?

A. I didn't understand that question?

Q. Do those calls pass through the hotel PBX to the telephone company central office?

A. No, they don't pass through the large hotel PBX, but go direct to the central office from that small attended PBX in the lobby.

[fol. 317] Q. But that PBX is operated and controlled entirely by the [illegible]tel, is that right?

A. That is correct.

Q. Mr. McCoy, is there any difference between the PBX facilities furnished to hotels, and the way they are operated, and PBX facilities furnished to other subscribers?

A. No, the facilities are the same that we furnish, and they are operated the same way.

Q. I am talking, of course, about other users of PBX service, such as offices, Government departments, department stores, and so on.

A. They have the same kind of PBX's and they are operated in the same way.

Q. Your attention was called this morning to applications for service made by the hotels. Will you state whether applications for PBX service, made by other users of that service, are similar, or different?

A. The same form of service application card is used in each case, for a PBX subscriber of any character.

Q. Now there has been reference to various services rendered by hotels to their guests, such things as taking messages and paging people to get them to come to the telephone, and a variety of services of that sort—are those things that the telephone company undertakes to do as a part of its service?

A. No sir, they are not.

[fol. 318] Q. You are speaking, now, of your own telephone company?

A. Yes; and in general I don't think any of the telephone companies in the Bell System furnish any such service.

Q. Well, as between the telephone company and the subscriber, if that sort of thing is to be done, who does it?

A. The subscriber does it if it is done, and it is the same type of thing, I think, that any subscriber does. On any incoming call, for example, if it is for someone other than the person who answers the telephone, that person who does answer the telephone attempts to get to the telephone the person that is wanted. It is done in your home and it is done in any office.

Q. How do you bill these hotels for their telephone service?

A. Bills are rendered which show separate items for the fixed monthly charges, the local message usage, the toll service, and with the bill there is an itemized statement of the toll messages.

Q. Are those bills similar to those that are rendered to other subscribers?

A. They are exactly the same type of bill as rendered to all PBX subscribers. They are itemized in the same way and cover the same items of service, where applicable, of course.

Q. Well, now, in this case, of course, we are dealing with a service that is used by a lot of other people besides the

[fol. 319] subscriber. Does the bill indicate that in any way?

A. No; the bill is rendered to the hotel for the entire service that is covered by the billing period, which was furnished to that PBX subscriber.

Q. Does that include the interstate toll calls that may have been made by guests as well as by the hotel itself?

A. It includes all calls of every kind made over that PBX, regardless of who made them.

Q. It does not, then, give any separation as between the hotel and the guest, or between different guests?

A. No sir.

Q. In regard to the surcharges or service charges made by the hotels in connection with these interstate toll calls, what connection, if any, does your telephone company have with them?

A. We have no connection with them; we don't know what the charges are and we don't have anything to do with the fixing of such charges, and we don't get the money from the charges.

Q. Does the telephone company, as a matter of fact, know what the hotel collects from the guest in connection with a telephone call?

A. No sir.

Q. Is that reported to the telephone company by the hotel in any way?

[fol. 320] A. No, they don't report it to us except in a case where the hotel guest may have skipped out without paying his hotel bill, and in such case the hotel may ask us to remove the charge because the guest didn't pay any part of his hotel bill.

Q. Does that happen very often?

A. No sir, it does not. That is, I can't speak for how often a guest skips out without paying his bill, but it doesn't happen very often that they ask us to remove the charge.

Q. Now there was some attention paid this morning to a provision appearing on Sheet 2 of your PUC Tariff No. 13, to the effect that a subscriber catering principally to transients and licensed to operate as a hotel, shall collect for and remit to the telephone company the charges incurred by such transients for local and toll messages. Can you tell us how that provision operates, in practice?

Mr. McGarraghy: I object, if your Honor please. That was the provision to which I objected this morning, and

I say that the provision speaks for itself, and if, in some particular instances it operates one way, it is not binding on the telephone company as to future operations.

The Court: I think the provisions speak for themselves; objection sustained.

By Mr. Price:

Q. Has that provision ever been invoked by the hotels [fol. 321] in connection with any toll charges of guests?

Mr. Plotkin: I think that is probably subject to the same objection that Mr. McGarraghy just made.

Mr. McGarraghy: I make the same objection.

The Court: I will allow him to answer it.

The Witness: To the best of my knowledge there has only been one such case since that provision of the tariff was introduced, I think in the early part of 1941.

By Mr. Price:

Q. Case of what?

A. Where the hotel asked us to credit a charge because the hotel guest had skipped without paying his hotel bill.

Q. By virtue of this provision of the tariff?

A. Yes sir.

Q. Now the tariff provision speaks of the hotel as collecting for the telephone company, and while this may have been covered I would just like to ask in that connection whether the hotels do, in fact, account to the telephone company, or in any other way indicate that they are collecting anything for the telephone company?

A. Well, the hotel pays——

Mr. Plotkin (interposing): I think Mr. Price is asking the same sort of question we tried to ask this morning, and I think we ought to object to it.

The Court: I think the question, for what it is worth, is [fol. 322] objectionable. You are asking him whether the telephone company collects from the hotel, isn't that your question?

Mr. Price: No, your Honor, whether the hotels accounts to the telephone company or in any way indicates that it is making collections for the telephone company. I think that is a matter of fact, your Honor.

The Court: I thought that was a matter that you had practically eliminated, that the hotel wasn't acting as agent for the telephone companies. Isn't that agreed to by all parties?

Mr. Plotkin: Oh no.

The Court: You contend what?

Mr. Plotkin: One of our findings is that the hotel is an agent of the telephone company when it collects these surcharges. That is one of the points.

The Court: Then that is a question of your regulations, isn't it?

Mr. Plotkin. Yes, your Honor, and the regulation is in, and the tariff speaks for itself.

The Court: Do you want now to try to prove agency on the part of the hotels for the telephone company?

Mr. Price: To disprove it.

The Court: Through this witness?

Mr. Price: Yes.

The Court: You say that the hotels are the agents of [fol. 323] the telephone companies?

Mr. Plotkin: That is right.

The Court: Is that a question of fact; have you any agreements here or anything in writing that would show that the hotels are acting as collecting agents for the telephone company?

Mr. McGarraghy: No sir.

Mr. Price: We think not.

Mr. Plotkin: Our feeling is, and I think when all the evidence is in, as we will argue, that the facts in the tariff and in the other relationship show that there is, in fact, an agency relationship. What they may call it to the contrary, we say that the facts show an agency relationship.

The Court: I will allow him to answer, subject to later objection.

Mr. Price: Will you repeat the question, Mr. Reporter?

(The reporter read the pending question)

The Witness: No sir, they do not. We render a complete bill to the hotel and they pay the bill. We don't know what part, if any, they collect from guests or collect from anybody else. They pay the bill.

The Court: In other words the telephone company looks to the hotel as the debtor of the telephone company?

The Witness: Yes sir.

By Mr. Price:

[fol. 324] Q. Mr. McCoy, has The Chesapeake & Potomac Telephone Company, in its tariffs, ever designated hotels in the District of Columbia as its agents?

Mr. Plotkin: I object, your Honor, the tariffs speak for themselves.

Mr. Price: They are not all in evidence. I am going way back; I am asking him whether they "ever" have.

Mr. Plotkin: If there are any tariffs you think are relevant I think you ought to put them in. Then it is a matter of argument as to whether they do or do not speak for themselves.

The Court: The Court can construe the rules or evidence pretty liberally. It appears to be a question of law and also an issue of fact as to whether the hotel is the agent of the telephone company, or whether the telephone company deals with the hotel as its debtor. We might as well get as much evidence in as we can on that, and then we can argue it at the close of the case. You may answer.

The Witness: No, we have not designated the hotels as agents in any of our tariffs.

By Mr. Price:

Q. Now are you familiar with any other contractual documents that there may be between the telephone companies and the hotels?

A. Yes sir.

Q. Has the Chesapeake & Potomac Telephone Company, [fol. 325] in any contract or any document, designated these hotels as its agents?

A. No sir.

Q. Mr. McCoy, the tariff provision in regard to charges at hotels, apartment houses and clubs, which is the subject of this case, was filed by your company on January 22, 1944, is that correct?

A. Yes sir.

Q. Did your company take any steps to call that provision to the attention of the defendant hotels, and if so will you tell us what was done?

A. Yes sir. There were several letters sent to the hotels, the first one being dated February 12, 1944.

Q. Have you a copy of that letter?

A. Yes sir; I have all three letters here but they are clipped together. May I cover them all and then hand them to you at one time?

Q. Go ahead.

A. The first one was dated February 12, 1944, and was delivered personally by representatives of the telephone company to the managers or their proper representative, of each of the hotels. That letter called attention to the tariff that had been filed, and attached to it was a copy of the FCC publicity release relative to the tariff, an excerpt of the tariff itself, and an agreement, a proposed [fol. 326] agreement, between the telephone company and the hotel, which proposed the payment of a 15 per cent commission to those hotels.

On February 19, 1944, a second letter was sent to each of the hotels, again quoting the tariff, and also quoting a statement issued by the FCC, of February 16th, calling attention to the fact that many hotels were continuing to charge surcharges.

Under date of April 3, 1944, a third letter was sent to the hotels, again referring to the matter, and stating that——

Mr. McGarraghy (interposing): I object to him reading what it states. If your Honor please, the reason I am objecting is because I am going to object to the letters themselves when they are offered, except in so far as they acquaint the hotels with the tariff. Any releases issued by the FCC are clearly not admissible against the defendant companies, nor is the proposed contract admissible.

The Court: I will let him answer for the time being, and then we will see whether it is material later on. You can reserve your right to make an objection.

The Witness: The third letter, dated April 3, 1944, called their attention to the fact that they now had had an opportunity to bring their practices into accord with the tariffs of the company, and that we would make no further commission payments after April 10th except to those hotels which had signed the agreement, or had signed a very [fol. 327] simple letter to the effect that they were complying and would continue to comply with the tariff provisions.

The Court: I want to ask you in regard to this 15 per cent proposed payment. Was that with the knowledge

and consent and approval of the Federal Communications Commission?

The Witness: I think they had knowledge of it, your Honor. I personally didn't participate in the discussions with the Commission. I don't think it was a matter of their approval; I think they had knowledge of it, that we were going to make that offer.

The Court: I will ask the attorney for the plaintiff that question, then?

Mr. Plotkin: They advised us of it and we wrote them a letter saying that we had no objection to it.

The Court: In other words, you had no objection to the telephone company, if they wished, paying out of their funds and monies so much as they might see fit, fifteen per cent in this instance, to the hotels here in Washington?

Mr. Plotkin: That is right. In an appropriate proceeding the amount of out-payment might become relevant; but at that point when they suggested it, we raised no objection to it.

The Court: There is no objection, in so far as the Government is concerned, in this case, and they have no objection to that agreement being accepted by the hotels in Washington, is that right?

[fol. 328] Mr. Plotkin: I am sorry, but I didn't quite catch the question, your Honor.

The Court: You do object to the hotels adding a surcharge to the regular toll charge?

Mr. Plotkin: Yes, so long as there is no provision in the tariff covering that.

The Court: That is what I mean. But if the hotels were not to add that surcharge, but would agree with the telephone companies to accept fifteen per cent of their toll charges, the Federal Communications Commission would have no objection?

Mr. Plotkin: That is right.

Mr. Price: I offer, as Telephone Companies' Exhibit No. 6, a blank mimeographed form letter on the letterhead of the Chesapeake & Potomac Telephone Company, dated February 12, 1944, to which is attached a mimeographed sheet headed, "Federal Communications Commission Publicity Release," and another mimeographed sheet in the form on a blank contract, headed "Agreement for Interstate and Foreign Message Toll Telephone Service"—

this being the letter of February 12, 1944, with enclosures, concerning which Mr. McCoy testified.

Mr. McGarraghy: I object, although I understand that your Honor is overruling me.

The Court: Yes, the objection is overruled; they will be admitted.

[fol. 329] (The document referred to, marked as Telephone Companies' Exhibit 6, was received in evidence.)

Mr. Price: I offer as Telephone Companies' Exhibit No. 7 a mimeographed form letter, dated February 19, 1944, on the letterhead of The Chesapeake & Potomac Telephone Company, it being the second letter of the three to which Mr. McCoy testified.

Mr. McGarraghy: I make the same objection.

The Court: Very well; the objection is overruled.

(The document referred to, marked as Telephone Companies' Exhibit 7, was received in evidence.)

Mr. Price: I offer as Telephone Companies' Exhibit No. 8 a blank form of letter, dated April 3, 1944, on the letterhead of the Chesapeake & Potomac Telephone Company, to which is attached a mimeographed sheet consisting of a form of contract, headed, "Agreement for Interstate and Foreign Message Toll Telephone Service", and to which is also attached a blank mimeographed form of letter addressed to The Chesapeake & Potomac Telephone Company—this being the third letter, with attachments, to which Mr. McCoy testified.

Mr. McGarraghy: The same objection, your Honor, as to the two previous exhibits.

The Court: The objection is overruled.

[fol. 330] (The document referred to, marked as Telephone Companies' Exhibit No. 8, was received in evidence.)

By Mr. Price:

Q. As a matter of information, Mr. McCoy, can you state whether the offer of the 15 per cent commission, made by your company in Washington, was parallelled by a similar offer of a fifteen per cent commission to other hotels, by the other Bell System telephone companies?

Mr. McGarraghy: I object to that——

The Court (Interposing:) You mean throughout the country, do you?

Mr. Price: Yes, your Honor.

The Court: I can't see that that is going to help this case. This case will have to stand upon what occurs here in the District of Columbia, Mr. Price, principally. The objection is sustained.

Mr. Gordon: We might explain that the reason we asked that is that the American Telephone & Telegraph Company, of course, does a nation-wide business, and they are one of the defendants. If the Court doesn't think it is material——

The Court (Interposing:) What they are doing out in Texas or Utah or Wisconsin, with the hotels out there, doesn't have any bearing on this case.

Mr. Gordon: All right, your Honor.

[fol. 331] By Mr. Price:

Q. Did any of the Washington hotels execute the proposed contract, or give the telephone company letters in the form shown by these exhibits?

Mr. McGarraghy: I object, your Honor.

The Court: I will allow it.

Mr. McGarraghy: Certainly whatever they do or did can't be binding on any of these defendants, your Honor.

The Court: If one of these defendants signed it?

Mr. McGarraghy: If he asked the question as to any of these defendants, that would be all right, but he asked whether any Washington hotel had done so. If he limits it to any of these 27 defendants, all right.

Mr. Price: I will limit it to the hotels that are defendants in this case.

The Witness: No, none of them have signed either the agreement or the letter.

By Mr. Price:

Q. Have any other hotels in Washington done so?

Mr. McGarraghy: I object——

The Court (interposing:) Objection sustained.

By Mr. Price:

Q. Have any of the defendant hotels here accepted payment of the 15 per cent commission that was offered?

A. We were advised by one, the Wardman Park Hotel, [fol. 332] that they were taking the credit for the commission, which was shown on their bills, into account, and were paying their bills minus the amount of the credit. None of the other hotels did accept the credit as shown on their bills, and they paid, or have advised us that they are going to pay, their bills without deducting that credit.

Q. Well, now, you say that the Wardman Park has accepted the credit of the commission: Will that credit, or payment, be continued to that hotel?

A. No, sir, the third letter of those that I mentioned before stated to all the hotels that from April 10th, on, the commission would not be paid unless they signed either the agreement or the letter stating that they were complying and would comply with the tariffs.

Q. Since the Wardman Park hasn't signed that, there will be no further payment or credit to that hotel?

A. That is right.

Q. In other words, the credit was only allowed for the period before April 10th?

A. Yes, sir.

Mr. Price: That is all we have of this witness, your Honor.

Cross-examination.

By Mr. McGarraghy:

Q. Mr. McCoy, the hotels are subscribers to this PBX service on the same terms and conditions, both with respect [fol. 333] to the message charges and the instrument charges both rental and installation, that applies to all other subscribers to PBX service, is that correct?

A. Yes, sir.

The Court: Just a moment—you put in that question something about rental. I don't understand that the telephone company regards this as a rental.

The Witness: We furnish service at fixed monthly rates.

The Court: I just wanted to know whether you caught that word in there about rental. The Government doesn't regard it as rental, do you?

Mr. Plotkin: From our point of view what they call it isn't material. It is the factual situation that is material. I think the telephone company takes the position that it isn't rent, and I think we would be inclined to think that it isn't rental.

The Court: I just wanted to be sure that this witness noticed that word.

By Mr. McGarraghy:

Q. Let's explore that. I didn't mean to inject that question. For every switchboard that is installed in a hotel a monthly charge is made, based on the size of the switchboard?

A. The charge is for the service, but naturally it has to be expressed in some unit, and so there is actually a monthly charge specified in the tariffs for each switch-
[fol. 334] board position, but we do not consider that we are renting equipment as such. It is only that the PBX service is rented or furnished at a rate.

Q. Regardless of how you consider it, the fact is that there is a monthly charge against the hotel, and that monthly charge varies depending upon the size of the switchboard, as one element?

A. That is right.

Q. Then there is also a monthly charge against the hotel for each extension station in the hotel, is there not?

A. Yes.

Q. And by "extension station" what do you mean?

A. That means a regular telephone instrument connected by an extension line, which is a pair of wires, to the PBX switchboard.

Q. And does that include the telephone hand-set in the room?

A. It includes a telephone instrument, it may not be a hand-set, but any type of instrument.

Q. Take the Shoreham, for example, the amount of the monthly which it pays to the telephone company is, in part, determined by the number of telephone instruments connected throughout the hotel?

A. That is correct, yes, sir.

Q. And the charge that you make, the charge that the
[fol. 335] telephone company makes, for these various in-

stallations and instruments, is precisely the same charge that is made to all other subscribers to PBX boards?

A. Yes, sir.

Q. Such as a department store?

A. Yes, sir.

Q. Now can you give us some other examples of subscribers to PBX service?

A. Law offices, newspapers, government departments, the courts—any business subscriber that is of substantial size and has a lot of employees would have a private branch exchange, and the rates in all cases are identical, regardless of the type of business.

Q. And in each of those instances the board is operated by an employee or employees of the subscriber?

A. Correct.

Q. Not of the telephone company?

A. That is right.

Q. The connection that is made with the telephone company is when that operator plugs into the line of the telephone company from the PBX board?

A. Yes.

Q. Now you stated this morning, I think that the hotel designates how much equipment it wants?

A. Yes, sir.

[fol. 336] Q. The size of the board; the number of extensions?

A. Yes.

Q. It also has complete control over the number of employees it has on the board, and when they shall work, and the conditions of their employment?

A. That is correct.

Q. Your bills are rendered to the hotel and not to the guests of the hotel?

A. Yes, sir.

Q. And the hotel pays the bill to you, to the telephone company?

A. That is right.

Q. I think that the tariff has been introduced under which the telephone company is not permitted to take messages or to give messages over the lines of the telephone company.

A. Yes, sir.

Q. So that if the hotel, through its operators, takes calls or delivers messages over the lines of your company, they

are rendering a service which the telephone company itself cannot render under its tariff?

A. That is right.

Q. And that would apply to a very short message, as well as taking a message from a guest of a hotel and calling somebody in another city and delivering a message for that guest to the person in that other city?

[fol. 337] A. That is right.

Q. Now a little while ago you referred to coin box stations in the hotels. As far as these 27 hotels are concerned, is it not a fact that in all of them, in the public rooms, accessible to the public, there are coin box telephone stations connecting directly with the telephone company and not through a PBX board of the hotel?

A. I think there is one exception, Mr. McGarraghy, but I can't be sure of that because I don't know of the relationship between the Pennsylvania Hotel and the Pennsylvania Restaurant which is in the adjoining building. The Pennsylvania Hotel building proper does not have a coin box telephone in it, but there is one or more in the Pennsylvania Restaurant—and if the two are associated, your statement is correct.

Q. And the Restaurant is contiguous to the lobby of the Pennsylvania Hotel?

A. It is right next door to it.

Q. Outside of that, all of the other hotels do have coin box telephones?

A. Yes sir.

Q. And when you refer to the fact that in some hotels they have telephone service through a small PBX board in the lobby—I think you said there might be a small independent PBX board in the lobby——

A. (Interposing): Did I understand you to say that all [fol. 338] hotels had that?

Q. Some hotels.

A. Yes sir.

Q. There are only three, are there not?

A. The ones I recall are the Mayflower, the Washington, the Willard, and I believe the Wardman Park has that arrangement.

Q. You may believe it but I know it is not so—I live there.

A. I thought they did.

Q. In those cases where they have this other service, there is a charge against the hotel for the PBX board?

A. Yes sir.

Q. Which the hotel pays to the telephone company?

A. Yes, at the regular tariff rate.

Q. And those PBX boards, as in the case of the larger hotel board serving the guest rooms, are operated by employees of the hotel company?

A. Yes.

Q. Now a moment ago you said, in undertaking to describe the service that was given by the hotels—I understood you to use language to this effect, that it is the same type of service that is given by any other subscriber to telephone service. Did I understand you correctly there, that if someone calls a home, and the person who is being called doesn't answer it, then the person who does answer [fol. 339] the call tries to get the person who is being called?

A. I think that is true, yes sir.

Q. That is true with respect to a private telephone in a person's residence, but when you come to a PBX board in, say, a law office, the service that you describe is the same service that is rendered by the secretary or the operator who happens for the moment to be operating the PBX board?

A. Yes. If the law office has a PBX board I think the operator of the PBX board, who is an employee of the firm of lawyers, does substantially what the hotel operator does.

If I call your office, if you have a switchboard, and ask for you, your operator connects your station to me and if you are there you answer it.

Q. And if I happen not to be there?

A. Then, presumably, she will inquire around the office to know if you are around, or where you are, or whatever the case may be.

Q. Or she may take a message for me to call you back at some later time, and when I come in she may call you back and complete the call?

A. That is right.

Q. And all of those services are services that the telephone company doesn't render or offer to its subscribers?

A. Yes, that is correct.

Q. Take my own law office as an example, where I happen [fol. 340] to have a lawyer who has office space with me and who has the benefit of the service of the switchboard operator, or the secretary who happens to be on the switchboard at the time. If I chose to make that associate a flat charge for the services rendered him, is there any tariff provision that prohibits that?

A. I believe not, Mr. McGarraghy. Of course we wouldn't know of any such charge that you made.

Q. You have testified that you don't know of any charge and have no personal knowledge of any charge made by the hotels; you don't undertake to control the charges by the hotels?

A. That is right.

Q. And there is no similar condition so far as my law office or any other PBX service is concerned, other than hotels, apartment houses and clubs?

A. That is right, yes sir.

Mr. Plotkin: I just don't know what the relevancy of these questions is. I think they could very properly be stricken, and to preserve the record I move that they be stricken.

The Court: The motion is overruled for the present; you can make that motion later if you think they are not material.

By Mr. McGarraghy:

Q. Referring to the telephone system within a hotel building, that is the PBX board and then the extensions and wiring and so forth, and the bells, that system is self-[fol. 341] contained, it operates within itself, does it not?

A. Well, in so far as service within the hotel is concerned.

Q. Until it becomes necessary for a call to be made outside of the hotel the service within the hotel building is completely self contained?

A. There is one possible exception, Mr. McGarraghy, depending on the size of the switchboard. The battery for some switchboards is furnished from our central office. In the case of large installations we have batteries on the premises. So that you might have that one exception; but other than that the service is self contained in so far as the service within the hotel is concerned.

Q. Now is such a system avaliable for installation by the hotel from any source other than the telephone company?

A. Yes, I think that anybody can buy from an independent manufacturer such material as switchboard equipment.

Q. Is there any such equipment available today that we could get from any source other than the telephone company?

Mr. Plotkin: I don't think he is competent to answer that, your Honor.

The Court: The objection is sustained.

By Mr. McGarraghy:

Q. Assuming that it is possible to get such equipment from some source other than the telephone company, would [fol. 342] the telephone company provide telephone service outside of the hotel, connected to such a system?

A. No sir.

Q. So that we have to use a system within the hotel which the telphone company provides, in order to have the telephone service outside of the hotel?

Mr. Plotkin: I object to that.

The Court: I will sustain that objection; that is going to impossibilities.

Mr. McGarraghy: The telephone company has a monopoly——

The Court (interposing): Is there any evidence before the Court that they have?

Mr. McGarraghy: I think the Court will take judicial notice that they have.

The Court: I won't take judicial notice as to something I don't know anything about.

Mr. McGarraghy: I think it is a matter of law that no other telephone company can do business within the District of Columbia.

The Court: That is not the question; the question is whether any store or hotel or apartment house could wire up a phone connection and put in batteries of their own.

Mr. McGarraghy: I am sorry that I didn't make my question clear. My question was—assuming that we could do it, and we did do it, would the telephone company furnish

[fol. 343] us outside service with such equipment, other than that which we obtain from the telephone company—and his answer was no.

The Court: Well, I let that in. I don't know whether you could get such equipment or not.

Mr. McGarraghy: I think the important thing, from our point of view, is that we are required to use the telephone company equipment in order to have telephone service outside of the hotel.

The Court: That isn't the question you have been driving at, though. You have been talking about the hotel or the apartment house installing some inside work of its own for communicating from one room to another, or down to the desk.

Mr. McGarraghy: That was simply preliminary to this subsequent question which has been answered now.

The Court: All right.

By Mr. McGarraghy:

Q. I think you have testified that none of the hotels have accepted this contract providing for a 15 per cent commission?

A. None of the defendant hotels?

Q. Yes.

A. That is right.

Q. Now that contract is not a part of the tariff, is it?

The Court: That proposed contract.

Mr. McGarraghy: Thank you.

[fol. 344] By Mr. McGarraghy:

Q. That proposed contract is not a part of the tariff?

A. No sir.

Q. The proposed contract contains other conditions besides the 15 per cent commission provision?

A. Yes sir.

Q. It contains, among other things, a termination clause on ten days notice, does it not?

A. Yes sir.

Mr. Plotkin: The contract is in evidence, your Honor.

The Court: Yes.

By Mr. McGarraghy:

Q. And the provision for changing a tariff is that it must be done under notice and hearing?

Mr. Plotkin: That is a matter of law, your Honor, and I also don't see the relevancy of this.

The Court: That has been offered in evidence and the Court can see that this proposed 15 per cent commission isn't something that the hotels are bound to take, they can take it or leave it; whereas, as to tariff rates in effect, the telephone companies and the hotels too are bound by those—isn't that the way it stands?

Mr. McGarraghy: If the tariff is a lawful tariff.

The Court: Yes, I am presuming that.

Mr. Price: Your Honor has in mind that the hotels are [fol. 345] not now required to sign any contract to get this commission, I take it?

Mr. McGarraghy: We are required to sign a letter, which is the equivalent of a contract.

The Court: Now the Court isn't going to take any attitude like that. The proposal is that the telephone company, I take it, has voluntarily offered, in order to get this matter disposed of, to pay the hotels 15 per cent of their toll charges so as to compensate them for the so-called extra services, and so on—isn't that it?

Mr. Price: That is right.

The Court: You may say that it isn't a contract, that it is just a letter, but it was an offer to enter into an arrangement like that—and the hotels in this suit haven't agreed to it?

Mr. Price: That is right.

The Court: Isn't that right?

Mr. McGarraghy: That is right.

I have no further questions, your Honor.

Redirect examination.

By Mr. Plotkin:

Q. Mr. McCoy, the defendant hotels are all subscribers to business service, aren't they, so-called?

A. Business message rate PBX service.

Q. What, generally, is business message rate PBX service?

[fol. 346] A. What is it?

Q. I mean how is it distinguished from other types of service?

A. Well, there are two major classifications of service. One is business service and the other is residence service. Residence service is furnished either on a flat rate basis or on a message rate basis. The service is limited, where it is unmeasured flat rate service, to the subscriber and the members of his family and household.

In the case of business service, the service is not restricted to any particular person, but the subscriber or anybody who has access to the service may use it if the subscriber gives his permission.

Q. When a hotel subscribes to message rate service, the telephone company, of course, knows that people other than the hotel employees will be using that service?

A. We don't have it as a knowledge of a fact, but I think we assume, when a hotel takes service, that somebody besides the hotel employees is going to use it; but we don't have any specific information to that effect and it is not indicated on the service application.

Q. The Court asked you if the telephone company didn't look to the hotel as a debtor, and you answered in the affirmative. Would you want to correct that answer in the light of the so-called "skipper" provision in the tariff, that we [fol. 347] talked about earlier?

A. I think the statement is generally correct and accurate, that we consider that the hotel management is our subscriber and we expect the hotel management to pay our bill.

Now as I explained, there is this "skipper" provision in the tariff, under which, if a guest skips out without paying his hotel bill, and included in his hotel bill there is some toll charge, the tariff provision is intended to take care of that kind of a case and relieve the hotel of responsibility for that particular call. That is a thing that almost never happens; I mean they never ask us for that credit.

Q. Prior to February 15, 1944, the effective date of this tariff, did the Chesapeake & Potomac Telephone Company, or the American Telephone & Telegraph Company in the District of Columbia pay any commissions to the hotels on interstate and foreign long-distance telephone service?

A. No sir.

Mr. Gordon: Pardon me, what was that date?

Mr. Plotkin: Prior to February 15, 1944, the effective date of this tariff.

Mr. Gordon: Thank you.

By Mr. Plotkin:

Q. One of the tariff provisions provides that operation shall be subject to such reasonable rules and regulations as the telephone company may adopt. What steps do you [fol. 348] take to find out whether the operators are or are not operating in accordance with your standards?

A. We have no such rules and regulations as are covered in blanket form in that tariff provision that you speak of. That was put in a good many years ago, and it may have been the intention or expectation at that time that maybe some day there would be such rules and regulations, but specifically we don't have any.

We do, however, have a force of PBX instructors, girls who are thoroughly trained in telephone operating work, and they, periodically, visit all PBX subscribers, not only hotels but all PBX subscribers, the larger ones certainly, and entirely in cooperation with the subscriber do some service observing at the board, watch the operators to see that they are properly trained and do the job in the most effective way; and these instructors are as helpful as they can be and just try to be as useful as they can be in the way of training.

Any PBX subscriber who hires a new operator, if she hasn't had much experience we will train that operator for the subscriber. That kind of service is offered to all PBX subscribers.

Q. If you had any complaints from, say, hotel guests as to the type of telephone service they were getting from the hotel operator, you would look into that, wouldn't you?

A. I think we would take the matter up with the manage- [fol. 349] ment of the hotel merely to let them know that we had received such a complaint. We wouldn't take any action other than that because the hotel operators are not our employees and we have no jurisdiction over them.

Q. You would endeavor, though, in cooperation with the hotel, to give her the instruction necessary to make her a competent operator?

A. If the hotel wished us to. If the hotel didn't want us to send a PBX instructor into their hotel to instruct their operators, we wouldn't send any one in.

Q. Of course the telephone company is interested in seeing that the guests in the hotels do secure proper long-distance telephone service?

A. Oh yes, we are interested in seeing that every user of the telephone gets good service because it affects two people, it affects not only the person who originates the call, but it affects the person who receives the call, and by and large it is telephone service in a general sense to them, and we are anxious to have them get good service.

Q. One further question. You are not an attorney, are you, Mr. McCoy?

A. No sir.

Mr. Plotkin: That is all, your Honor.

Mr. Price: We have nothing further, your Honor.

Mr. McGarraghy: May I ask one further question?

[fol. 350] The Court: Yes.

Recross-examination.

By Mr. McGarraghy:

Q. When you refer to these PBX instructors, they go to all PBX subscribers if they are called on for that purpose, do they not? They don't limit their instruction to hotels or apartment houses or clubs, but they go to any PBX subscriber who asks for the help of an instructor?

A. Oh yes—and we don't always wait to be asked. These girls make periodic visits and before they start instructing the first contact they make is with the management of the concern, and say, "I am from the telephone company; I am a PBX instructor; would you like me to take a look at your switchboard and see if there is anything I can do to be helpful?"

Q. Of course if the company doesn't want that service, you don't give it to them?

A. We don't force ourselves on them, no sir.

Q. When we were discussing the equipment charges, there is a charge of fifty cents a month, I believe, for hand-sets in individual guest rooms of hotels, is there not?

A. I hope I will get you straight on this hand-set business. There is no charge for a hand-set as such. There

is a fifty cent a month charge for an extension station, and it may be any kind of instrument.

[fol. 351] Q. For any kind of an extension service?

A. Yes. That was one of our old headaches, but we are over it now.

Q. And that fifty cents a month applies, whether or not that particular hand-set is used, or whether the room is used, so long as the hand-set is connected?

A. Oh yes, we don't know when the room is being occupied, at all.

The Court: If you install a telephone in a country grocery store, you charge that man so much a month for putting that in there. That is a charge, isn't it, not for putting it in but for having it in?

The Witness: If it is a message rate telephone, he is charged according to the number of messages he uses.

The Court: If he calls up New York City—say he is up in Maryland, at some crossroads—that would be put on his bill?

The Witness: Yes.

The Court: You would look to him to pay that?

The Witness: That is right, sir.

The Court: Suppose he has a friend who lives down the pike a half a mile, and that friend comes up there and wishes to call up New York. The grocery man wants to keep him as a customer, so he lets him call up New York, and there is a toll charge—you don't look to the customer [fol. 352] down the road to pay that charge, do you?

The Witness: No sir.

The Court: You look to the country grocer, don't you?

The Witness: That is correct.

The Court: Now, then, suppose the country grocer thinking, "Well, I have got to go down the road a piece in order to get him up to the phone, so I am going to let the people around this neighborhood understand that when they want to put in a long distance call (I am using only that example) they can come up here and I will say, 'Well, it is going to be 25 cents additional for coming up here and using my phone'."—You are not interested in that at all?

The Witness: No, sir, we have no provision in our tariffs relating to that?

The Court: Now would the Commission, in a case of that kind, regard it that that 25 cents should be put into a tariff

provision, or would they let the country grocer charge that to his neighbor down the road? That is a very simple case.

Mr. Plotkin: Well, I don't want to hedge, but the Commission has never passed upon a case like that, and I couldn't bind the Commission on that. I don't know what they would do in a case like that.

Speaking purely as an individual I think it might make a difference whether it was done once in a while, or regularly.

The Court: Suppose he did it once a week or twice a week [fol. 353] or three times a week—however, you are not prepared to answer that, you say.

Mr. Plotkin: No. If this country grocer let it be known around the neighborhood, "Anybody can come in and use my phone to make long distance calls, but when they do it they have got to pay me a quarter."—that would be one situation. If I send my boy down the road to get a man and call him to the telephone, and he gives my boy a quarter, that is another case. But the Commission has never passed on that and I can't bind the Commission.

Mr. McGarraghy: I think counsel will agree, however, that under existing tariffs there is nothing to prevent what his Honor outlined?

The Court: In other words, that would bring you down to your proposition that the hotel could charge this overcharge of 25 cents, or whatever it is, on the bill against the hotel guest?

Mr. McGarraghy: That is right.

The Court: And you contend that they can't do that?

Mr. Plotkin: That is right, your Honor.

In the Commission's report, which is appended to our complaint, it says:

"If the collection of such surcharges were not subject to regulatory control, a subscriber, or anyone else other than the telephone company, who is permitted by the tele- [fol. 354] phone company to control access to the use of a telephone, could freely resell interstate and foreign telephone service, imposing any charges of his own on such use. This would mean at least a partial nullification of effective public regulation of charges for interstate and foreign communication service, for there would then be a serious hiatus in the safeguards against excessive and discriminatory charges to the using public. A hiatus of this

nature would be squarely contrary to the intention evidenced in the Communications Act of 1934 that there be comprehensive regulation of charges for interstate and foreign communication service."

That comes as close, in the Commission's opinion, to answering your Honor's question, as I can come.

The Court: Well, I can't see that you ought to differentiate between the country groceryman and the hotel. Your contention is that you are looking out for the public generally and that you don't want them to be overcharged for communications made in interstate commerce, where the Commission has fixed a certain charge?

Mr. Plotkin: That is right. The only point I am making is that as a practical matter what came before us was the situation in apartment houses, clubs and hotels, that is where the problem exists. Therefore we required the filing of a tariff and there is now a tariff on file, and that specific tariff is now being violated. If this other situation were [fol. 355] presented to us we might, after hearing, require the filing of a tariff covering that.

The Court: Hasn't this present trouble grown out of the fact that the hotels want the telephone company to put these charges on their bill and have these charges for extra service as a tariff; isn't that what is back of this case?

Mr. McGarraghy: We want to be permitted to make the charge for this extra service.

The Court: And you want that to be put on as a part of the tariff?

Mr. McGarraghy: We don't think the telephone company can regulate the charge, but we do say that under the ruling of the Commission it ought to be put on the tariff if it is to be put in at all.

The Court: But do you contend that the telephone company could go ahead and let you charge these amounts and they not put them in as a part of the tariff?

Mr. McGarraghy: Those charges are not telephone company charges, sir, they are hotel charges.

The Court: I know, but do you want them put in with the telephone charge?

Mr. McGarraghy: No, sir; we claim the right to make these charges the same as we make our room charges.

The Court: And who is going to pay them?

Mr. McGarraghy: The public; our guests pay them.

[fol. 356] The Court: And that comes back again to the proposition about the man down the road, you see.

Mr. McGarraghy: That is right.

The Court: In order to be consistent it seems to me that the Commission would have to say, "We won't let that charge be put on the man down the road, directly or indirectly."

Mr. Plotkin: The factual situation is this. Here, because of the hearing which the Commission held they did actually file tariffs saying, in effect, that service is offered on condition that no other charge will be made. Therefore, this is an express violation of the tariff to make any other charges.

As to the country grocer, there is no express violation of a tariff, but if there were such a factual situation presented, and the Commission after investigation found these facts to exist, then the Commission might say to the telephone company, "You either file tariffs showing what the country grocer is collecting, or put in the conditions upon which he would offer service"—and that would be the identical case.

Reduced to the simplest terms what this case is about is that tariffs have been filed which state the conditions upon which service can be offered and accepted. Those tariffs are not being followed. Under the Communications Act you cannot render interstate or foreign communications service except in accordance with tariffs.

[fol. 357] Why the tariffs were filed, and so forth, goes into the background of the case, but the simple legal proposition is that the tariffs were filed and they are not being observed, and the Communications Act says that it is unlawful not to observe filed tariffs.

The Court: What are the hotels doing that causes them not to be observing these tariffs?

Mr. Plotkin: When I make a call from a hotel for which the charge in the tariff is a dollar, and the tax is another quarter, which makes it $1.25, they charge me $1.50.

The Court: Is that the telephone company doing that?

Mr. Plotkin: Yes, to this extent, your Honor. The telephone company has filed a tariff which says, "We offer service to you on condition that you make no extra charge." That is the representation of the service they offer. Now when the telephone company is aware of the fact that a

subscriber is using service contrary to the conditions contained in the telephone company tariffs, then, if the telephone company continues to render service to that subscriber, it is rendering service in violation of its own tariffs, which is a violation of the Communications Act.

The Court: And that is the reason why you want to contend that the hotel is the agent of the telephone company, and that therefore the telephone company, through its agent, is violating the tariff?

[fol. 358] Mr. Plotkin: If they are the agent, the law is clear. There is a specific statutory provision, which I will not raise now, which says that a principal is responsible for the acts of his agent.

But we say that if they are not agents, if they are what they claim to be, only subscribers—suppose the tel-phone company in its tariff on file says, with respect to the phone that you have in your home, that you are permitted to use it for yourself and for members of your immediate family, and people like that, then one of the conditions that you have is that you do not permit the public-at-large to use your phone. Now if you should permit your phone to be used by the public-at-large, and make a charge for it, and the telephone company knows that, then they are rendering service to you not in accordance with their own tariffs.

It is the telephone company's duty to comply with its own tariffs, and they have a very effective remedy to protect them in such a situation. The only thing that they have got to do, if the hotels persist in collecting these surcharges, is to cut off service to the hotels, and in our argument I will show that there are a long line of cases where the telephone company in cutting off service, the telephone company and other utilities, are protected by the courts; they can cut off service if the regulations are not complied [fol. 359] with; their contract so states and the tariff so states, and the law is clear. But if they don't want to go that far, if they don't want to be that drastic, the least the telephone company can do is to go in and get an injunction against the hotels to prevent them from making these extra charges. They haven't done that.

Frankly, and on the record, we don't want them to cut off service to the hotels. What we want to do is to see that the tariffs are obeyed, but it is their duty to see that the tariffs are obeyed.

The Court: Your contention is that it is a violation of the regulations in the tariff when it is done in sufficient volume, but if it were done in just a few instances, it isn't a violation?

Mr. Plotkin: No, that isn't the point. I say once a tariff is filed it is a violation the first time that it is done. I say that no such tariff has been filed in the case of the country grocer, because that hasn't come to our attention. But once a tariff is filed, the first time they do it it is a violation of the tariff.

The practical problem does exist with respect to the hotels. Before we entered into this investigation we received a good many complaints from all over the country——

Mr. McGarraghy (Interposing:) There is not the slightest evidence here in the record, or before the Commission——

The Court (Interposing:) I am not going to take argument for testimony.

[fol. 360] Mr. Plotkin: There isn't anything here in the record about the country grocer, either.

The Court: I think I understand your position all right.

If you are through with this witness, he may be excused. You are excused.

(Witness excused.)

Mr. Plotkin: Before calling our next witness, for the sake of the record I would like to offer in evidence at this time Exhibits 1, 2, 3 and 4 attached to our complaint.

The Court: If there is no objection they will be received in evidence.

(The documents referred to, marked Plaintiff's Exhibits 28, 29, 30 and 31, were received in evidence.)

Mr. Plotkin: L. Gardner Moore.

Thereupon,

L. Gardner Moore called as a witness for and on behalf of the United States, having been first duly sworn, was examined and testified as follows:

Mr. Gordon: If the Court please, may I ask something?

The Court: Yes.

Mr. Gordon: These last four exhibits, Plaintiff's Exhibits 28, 29, 30 and 31, consist of an order of the Commission, certain reports of the Commission, and another [fol. 361] order of the Commission. Of course we have no objection to them so far as authenticity is concerned. They obviously are the orders and reports and so forth that they purport to be. However, I assume that these are not admitted as proof of the facts stated in the reports of the Commission, for example? Of course we would object to that.

Mr. McGarraghy: So would we also, your Honor.

The Court: They are only admitted as being the reports, or copies of the reports of the Commission, but whether the Commission was right in what they said in them, or whether the Commission was wrong in what they said in them, the mere admitting of them into evidence doesn't prove that the contents of these documents are true.

Mr. McGarraghy: Doesn't prove the truth of what they contain.

The Court: No, that is correct.

Mr. Plotkin: That is what this lawsuit is about, to see if we were right or wrong.

The Court: And evidence can be adduced to disapprove or attempt to disprove their contents.

Mr. Gordon: If the Court please, I don't want to take any unnecessary time but I didn't quite get the Court's last remarks. Did you say that if they were not true we could prove that?

The Court: If you want to show that some of the state- [fol. 362] ments in those exhibits are not true, you may offer evidence to show that they are not true, that they are not facts.

Mr. Gordon: My objection went just a little further than that. I don't think they are evidence, at all, of facts. You see what I mean——

The Court (Interposing:) I know what you mean. That comes up every day. A person writes a letter in a divorce case and the recipient of it offers it in evidence, and it goes in evidence as having been written by that person. Whether all of page 1 is true or is not true is for the other side to show, and whether some statement on page 2 that "I saw you kissing that man on such and such a night" was true or not, that is for the other side to answer; but that doesn't make the letter inadmissible.

Mr. McGarraghy: But the facts stated in these exhibits are not accepted as evidence?

The Court: They are accepted as reports—that is what they are, isn't it?

Mr. Plotkin: One order, one report, another order and a tariff of the company.

The Court: They are received in evidence; if you want to disprove any statements contained in them, the defendants may do so.

Mr. Plotkin: We will argue later on just what effect has to be given to the Commission's determination that has [fol. 363] been made in this case.

The Court: I am just admitting them in evidence as reports and orders of the Federal Communications Commission.

Direct examination.

By Mr. Plotkin:

Q. State your full name, Mr. Moore?

A. L. Gardner Moore.

Q. Where do you work, Mr. Moore?

A. I am the manager of the Shoreham Hotel.

Q. How long have you been manager of the Shoreham?

A. Since 1930.

Q. Are you also an official of the Hotel Association of Washington, D. C.?

A. I am president of the Association.

Q. And how long have you been president?

A. About eight years.

Q. What are your duties as manager of the Shoreham Hotel?

A. Well, the general managerial work and supervision of the various departments of the hotel.

Q. All the various departments of the hotel are under your supervision and control?

A. Yes, sir.

Q. You are familiar, of course, with the tariff which was filed by the telephone company in January, 1944, effective February 15, 1944?

[fol. 364] A. Yes.

Q. Will you please describe how telephone service is rendered throughout your hotel? Instead of asking a lot

of questions I want to have you tell us about your PBX, how many trunks you have, how many extensions you have, how many guest rooms you have——

The Court (Interposing:) Is it necessary to go into all that detail about this hotel?

By Mr. Plotkin:

Q. You heard Mr. McCoy's testimony this morning, did you?

A. Yes, sir.

Q. Was that an accurate statement of the set-up in your hotel?

A. That is correct.

The Court: You heard Mr. McCoy's testimony?

The Witness: Yes.

The Court: And the equipment and appliances and all that you have there in the hotel were accurately set forth by Mr. McCoy?

The Witness: Yes, your Honor.

The Court: That will save a lot of repetition.

By Mr. Plotkin:

Q. And also, not only as to the type of equipment, but as to who owns it, his testimony was accurate, was it? You don't own it but the telephone company owns it and you [fol. 365] pay a monthly charge for it, is that right?

A. That is right.

Q. Can guests secure direct telephone service in their rooms without your consent? I understand you have two types of guests in your hotel?

A. Yes; we have what is known as the hotel guest, or transient; and also the permanent guests, who have apartments.

Q. With respect to the transient guests, can they secure direct telephone service from their room, without your consent, without going through the PBX?

A. They have to go through the PBX.

Q. Suppose they want to get a telephone connection with the telephone company direct, they would have to get your consent, would they?

A. Yes, or else go to the lobby.

Q. You don't permit the installation of direct telephone lines in the guest rooms?

A. As to permanent guests, but not with transients.

Q. With respect to permanent guests, what type of telephone service do they have?

A. They have both; they have the line going into the hotel through the hotel PBX, and then if they wish we allow them to put in a private line of their own.

The Court: Just like a person in an apartment house would put in his own phone?

[fol. 366] The Witness: That is right.

By Mr. Plotkin:

Q. Could you describe briefly how a long-distance call is made by a guest in your hotel?

A. A typical hotel guest?

Q. Yes—and when speaking of hotel guests it will be understood that we are talking about transients unless I state otherwise.

A. He uses the instrument that is in his room and asks for the long distance operator, which is one of own operators on the switchboard, the PBX board.

Q. A separate operator?

A. A separate operator. She asks what is wanted and he gives the call, usually saying that he wants to call such and such a number in such and such a city. We have, on that board, eight outside lines that are directly connected with the toll office of the telephone company. She immediately plugs in on that line and when she plugs in the telephone operator in the toll office answers and he proceeds to give the number to the operator, the toll operator in the main office.

Q. The guest does?

A. Yes. Our own operator stays on the line for two reasons: First, to see that he gets the call to the toll operator; and second, to see that he gives the right room number that he — calling from so that the charges can go [fol. 367] to the correct room number.

She stays on that line until that call has been completed and she hears the conversation start, and then she goes off the line. We have found, though, in a great number of cases, that the guests of the hotel do not take advantage of going through and talking to the other operator, they want our operator to handle the call and they merely, then,

ask our long distance operator to get them Mr. Jones at such and such a number in New York, "and call me back".

Then our operator goes in through the same procedure; calls the toll office and gets the number, and when she is ready with the call she calls and says she has the line ready.

Q. When she calls the long distance operator does she say, "Get me Mr. Jones".

A. She doesn't have to then.

Q. I mean your operator.

A. Our operator doesn't have to unless she asks who is calling.

Q. You didn't understand me. When a guest in a hotel room calls your hotel operator and says, "Get me Mr. Jones of New York City", and the guest doesn't know the telephone number, what does your telephone operator do?

A. Then she plugs in and asks long distance for that number, the number of that man in New York.

Q. Your hotel operator doesn't undertake to——

[fol. 368] A. (Interposing): We have the phone books there, but they are so hard to get for all the cities that we find it saves time to get it through Information in the various cities.

Q. Now what happens when the connection is made and the call is completed?

A. After the man has finished his conversation there is a disconnect on the line and our operator comes in and pulls the plug out.

Q. By "disconnect" you mean when the guest hangs up that that shows a disconnect on the board?

A. Yes.

Q. Then what happens?

A. Then, in the space of anywhere from 15 minutes to 2 hours the telephone company operator will call back and give us the charges on that particular call.

Q. You said that the moment your operator gets the disconnect signal she disconnects with the telephone company?

A. Yes.

Q. Then she gets the charge from the telephone company operator?

A. Yes.

Q. How is that quoted to her?

A. It is quoted to her as so much for the call and so much tax.

Q. Does the telephone company operator quote the tax?

[fol. 369] A. Yes.

Q. And what would she say—"On Mr. Jones' call to New York the charge is (so much) and the tax is (so much)?"

A. That is right.

Q. And then what does your operator do?

A. She has a memornadum of the call going through so that she will be sure to get the call back, because very often she has to call in and ask for those charges because of the delay. Then, when she gets this call back from the toll operator she makes out a voucher for the charge, showing the time of the charge, how many minutes, the amount of the call to New York, for instance, the names of the parties called and calling, the room number, and the tax—and then to that is added the service charge.

Q. She puts down the telephone company charge, the tax, and they your service charge?

A. That is right—and all the other information also, on that charge slip.

Q. Yes. Now what happens to that voucher?

A. That is sent to the front office or the bookkeeping office of the hotel, and posted to the guest's account.

Q. Could you tell us how those charges are determined? Before we go into that, when a call is made intra hotel, is there any charge made at all?

A. Within the hotel?

[fol. 370] Q. Yes.

A. No, there is no charge.

Q. Is there any charge made on outgoing local calls?

A. Yes.

Q. What is that charge.

A. There is a charge of five cents for the permanent guests, and ten cents for the hotel guests.

Q. How about incoming local calls?

A. There is no charge for those.

Q. Now going to long distance calls, suppose you have a prepaid call from a hotel room, what is the scale of charges on that?

A. That would be a hotel guest calling another city and asking that the charges be reversed?

Q. No, a prepaid call. John Jones picks up the phone and says, "Get me New York City, I am paying for it here"—it is prepaid. What is the charge on that?

A. We charge ten cents, up to one dollar, over and above the regular rate. Above that it is ten per cent with a maximum of $3.00.

Q. With a maximum of $3.00?

A. Yes.

Q. Has $3.00 always been your maximum?

A. No, it was $2.00.

Q. When was the maximum raised to $3.00?

[fol. 371] A. We changed it in November.

Q. November of 1943?

A. Yes.

Q. Did you apply for consent to the Rent Administrator to increase that maximum?

A. No, we did not.

Q. You say that the charge is ten cents up to a dollar. Does that dollar mean a telephone company charge, or the telephone company charge plus the tax?

A. I think it is the telephone company charge plus the tax.

Q. And the ten percent is on the sum of the telephone company charge plus the tax?

A. Yes, but then we give the breakage either way; we take the nearest five cents.

Q. And you take the breakage in each case, or you charge it to the nearest nickel?

A. Either way. If it is over three cents we charge the guest; if it is under three cents, we don't charge them.

Q. In other words, if the call is a dollar, and the tax is 25 cents, the surcharge would be ten or fifteen cents?

A. Ten cents.

Q. If the call is $1.25 and tax is $.25, so that the total is $1.50, the surcharge is 15 cents, is that right?

A. Yes.

[fol. 372] Q. Suppose I am a guest in your hotel and I make a collect call—is there a surcharge on that?

A. Yes.

Q. How much is that?

A. The same rate as the other.

Q. I make a collect call, but it is being paid for on the other end.

A. Yes.

Q. The same charge is made on a collect call?

A. Yes.

Q. Has that always been the case?

A. No.

Q. When was that changed?

A. In November.

Q. And did you apply for consent to do that to the Rent Administrator?

A. We did not.

Q. How about on prepaid received calls; in other words, I receive a call in my hotel room which is paid for at the other end—is there any charge?

A. No.

Q. How about a collect call received in my room—in other words, someone calls me collect?

A. Yes, there would be a charge if you accepted the call.

Q. And that charge would be the same as in the other case?

[fol. 373] A. That is right.

Q. Suppose I try to make a call from my hotel room and I am unable to reach the party, is there a charge made on that? Suppose I live in your hotel and ask your operator to try to get me John Jones in New York, and she calls back and says that John Jones doesn't answer, and I say, "Cancel the call"—is there any charge against me?

A. I am sure there is a ten cent charge on that.

Q. There is a ten cent charge?

A. Yes sir.

Q. Now these charges that you have been describing apply whether the guest asks your operator to get the call through her or the guest is connected directly to the long distance operator of the telephone company, is that correct?

A. Yes. This other system of those trunk lines going direct to the toll office was an idea of the telephone company and was put in a few years ago, I think in the early 30's, to try and speed up telephone service. With us today it does not speed up service, so our operators have to stay on the line because in almost every other case the trunks are busy, the lines are busy to various cities, and the call doesn't get through. So we don't save very much time. We are really putting through all the calls now, or with such supervision, if we do put it on the trunk line that we might just as well put in the call.

[fol. 374] Q. Were any commissions paid to you prior to February 15th on local and long distance calls?

A. Only through pay stations in the lobby.

Q. You mean you do get a commission on the receipts from the public pay stations?

A. Yes.

Q. The coin boxes?

A. Yes.

Q. And is that commission based on the total amount in that box, whether for local or long distance calls?

A. Yes.

Q. And those are cases that are not operator attended?

A. We have nothing to do with the coin boxes.

Q. Do you have any operator-attended booths in your hotel, Mr. Moore?

A. We do not.

Q. You heard the previous testimony that there were some in Washington?

A. I did.

Q. If a hotel having such operator-attended booths, makes surcharges to its guests in connection with calls from their rooms, do they also make the same surcharges when somebody calls from these attended-booths?

A. Well, you could answer that as well as I could. It would only be hearsay with me.

[fol. 375] Q. You are president of the Association, are you not?

A. As far as I know it is the same charge as made for calls from the rooms.

Q. Are the charges made by the other defendant hotels, the surcharges, the same as made in your hotel?

A. They vary, but they are substantially the same, depending on the type of hotel.

Q. There is no uniformity?

A. No.

Q. But they are generally on a percentage basis?

A. Yes.

Q. Some of them have maximums and some do not have maximums, is that right?

A. I think most of them have maximums. There is a difference in the percentage.

Q. Pursuant to your subpoena did you produce telephone bills and vouchers for calls made on February 15th and April 1st, 1944?

A. I did.

The Court: Will you be some little while longer?

Mr. Plotkin: I will be two or three minutes, and then I am through. Not to burden the Court with all these records, I would just like to put in two specimen ones. I will only use the April 1 date.

By Mr. Plotkin:

[fol. 376] Q. I hand you Plaintiff's Exhibit 32 and Plaintiff's Exhibit 33. Plaintiff's Exhibit 33 is a blue-green slip of paper entitled "Long Distance Telephone Call," is that right?

A. That is correct.

Q. And it has a number on it?

A. Yes.

Q. Would you read the details that appear in the upper left hand corner?

A. Telephone company charge—50 cents; Tax—13 cents; Total—63 cents; Service Charge—10 cents.

Q. I notice that the words "Service Charge" are crossed off and "Secretarial" is stamped in. When was that change made?

A. In March.

Q. March of this year?

A. Yes. The first vouchers you have there will show it without the change.

Q. Is this blue-green slip that you are reading from the slip that your hotel operator makes out when she gets the charge?

A. Yes, this is a portion of it. The other portion is the book of original entry. This is the duplicate that fits into that book; and this green slip is the slip that is sent to the front office for charge, and also it is kept at the front office for the guests checking out if they want to check back on their long distance calls.

[fol. 377] Q. And that is not actually given to the guest?

A. It is available at the front office.

Q. But the guest doesn't get it unless he asks for it, is that correct?

A. No, it isn't feasible for us to do that because in running a hotel with so many permanent people this bill would be so full of vouchers that we couldn't get them in.

Q. What is the bill that the guest himself gets?

A. This one (indicating Plaintiff's Exhibit 32) or rather a white bill exactly like this; this is the ledger sheet.

Q. The other is an identical duplicate?

A. Yes.

Q. An identical duplicate of Plaintiff's Exhibit 32?

A. Yes.

Q. Will you read the items on Exhibit 32 to which Exhibit 33 refers, that long distance call under date of April 1st? How is it recorded on Exhibit 32?

A. Under date of April 1st, Line 13, it says—Long Distance—63 cents. Under date of April 1st, Line 14, it says—Long Distance—10 cents.

Q. And that is the call which is referred to on the voucher, Exhibit 33?

A. That is correct. The reason that we have to list them both as a Long Distance key is that we use the National [fol. 378] Bookkeeping Machine and we have a limited number of keys, and this is the designation that we thought was the best to use because it calls the guest's attention to the fact that it is a long distance charge.

Mr. Plotkin: Your Honor, I offer Plaintiff's Exhibits 32 and 33 in evidence.

Mr. McGarraghy: No objection.

(The documents referred to, marked Plaintiff's Exhibits 32 and 33, were received in evidence.)

By Mr. Plotkin:

Q. I hand you Plaintiff's Exhibits 34 and 35. Will you please read the charges on the blue-green slip?

A. Telephone Company Charge—$3.90; Tax—$.98; Total—$4.88; Service Charge—$.40.

Q. How is that shown on the bill, that one that is given to the guest?

A. Under date of April 1st, Line 23—$4.88.

Q. Long Distance?

A. Yes. And also under date of April 1st, Line 24—Long Distance—40 cents.

Q. How does it come about that that was 40 cents instead of 45 cents?

A. The operator made a mistake and gave it to the guest.

Mr. McGarraghy: Made a mistake against the company?

[fol. 379] By Mr. Plotkin:

Q. That should have been 50 cents normally, isn't that right?

A. Yes.

Mr. Plotkin: I offer Plaintiff's Exhibits 34 and 35.

(The documents referred to, marked as Plaintiff's Exhibits 34 and 35, were received in evidence.)

By Mr. Plotkin:

Q. Mr. Moore, these represent samples of any number of hundreds of bills that are being rendered constantly to your guests for interstate and foreign long distance telephone charges, do they not?

A. They do.

Q. And these are the vouchers that are regularly kept in your hotel; these are true and correct copies of the vouchers that are regularly kept in your hotel, is that right?

A. Yes sir. Those vouchers are made out for the charge, but are made to give to the guest also, on request. The voucher which is really a part of our record is the carbon copy that remains in our book of original entry.

Q. The vouchers and the bills are true and correct?

A. Yes.

Q. And the telephone company charge is what the telephone company operator advises you that the telephone [fols. 380-382] company's charge is?

A. Yes.

Mr. Plotkin: That is all on direct, your Honor.

The Court: How long will the cross-examination of this witness take?

Mr. McGarraghy: I should think it would be at least a half an hour, as far as I am concerned.

The Court: Have you any more witnesses?

Mr. Plotkin: We have no other witnesses if we can agree on a stipulation, which I think we can.

The Court: How many witnesses will you have for the telephone companies?

Mr. Price: We have one witness who may take about ten minutes.

The Court: And how many witnesses will you have, Mr. McGarraghy?

Mr. McGarraghy: Mr. Moore is our only witness.

The Court: Well, I think we will adjourn until tomorrow morning at ten o'clock, and we can speed along then.

(Whereupon, at 3:35 o'clock, p. m., the trial was adjourned until Thursday morning, April 27, 1944, at 10:00 o'clock.)

[fol. 383] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Washington, D. C.,
Thursday, April 27, 1944.

The above-entitled cause came on for further hearing before Associate Justice Daniel W. O'Donoghue, in Civil Division No. 6, at 10:00 o'clock a. m., pursuant to recess.

APPEARANCES:

On behalf of the United States:

Harry M. Plotkin, Esq., Special Assistant to the United States Attorney, Benedict P. Cottone, Esq., and Harold J. Cohen, Esq.

On behalf of American Telephone and Telegraph Company:

T. Brooke Price, Esq., General Attorney, A. T. & T., New York, N. Y., and E. S. Hawley, Esq., New York, N. Y.

On behalf of The Chesapeake & Potomac Telephone Co.:

R. A. Van Orsdel, Esq., and Spencer Gordon, Esq.

[fol. 384] On behalf of the Hotel Association of Washington, D. C., Inc.:

Joseph McGarraghy, Esq., Parker McCollester, Esq., and Joseph W. Wyatt, Esq.

[fol. 385] Proceedings

Mr. McGarraghy: Mr. Moore, will you take the stand?

Thereupon, L. Gardner Moore, the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Mr. McGarraghy: May I proceed, Your Honor?
The Court: Yes.

Cross-examination.

By Mr. McGarraghy:

Q. Mr. Moore, you stated yesterday that you had been Manager of the Shoreham Hotel since 1930, and President of the Hotel Association of Washington for the last 6 years. Will you state your hotel experience prior to the time that you became manager of the Shoreham?

Mr. Gordon: Don't state all of it. (Laughter.)
The Witness: Well, prior to the Shoreham, I was Manager of the Carlton Hotel; and prior to that, I was Manager of the Wardman properties, which comprise the Wardman Park, the Carlton, the Hay-Adams, the Chastleton, the Highlands, and Stoneleigh Court. Prior to that I was auditor of the Wardman Park Hotel. That takes me back to 1918.

By Mr. McGarraghy:

Q. Since 1918, you have been in the hotel business either as auditor or manager of various hotel properties?
[fol. 386] A. That is right.
Q. And does your entrance in the hotel business in 1918 mark the commencement of your hotel experience?
A. That is right.
Q. Did you have any personal connection with the installation of the telephone equipment at the Shoreham Hotel?
A. Yes, I made the arrangements for the equipment.
Q. Approximately when was that?
A. That was during the spring of 1930, when we had our offices on Vermont Avenue, the 1000 block of Vermont.
Q. That was before the Shoreham opened?
A. Yes.

Q. In other words, were you employed to be manager of the Shoreham before it was opened, and you made the arrangements for the telephone equipment?

A. Yes.

Q. Will you explain to the Court in a general way what arrangements you made with the Telephone Company?

A. Well, I went over the equipment necessary with a representative of the Telephone Company, and between the two of us—and also their engineers—we decided how many positions we would start off with at the Shoreham, the amount of telephones, and where they should be located.

Q. When you say the number of positions, does that mean the number of positions on the switchboard?

[fol. 387] A. On the PBX board. We started off with four or five, and then increased it later, as the business grew, to six.

Q. You now have a 6-position board?

A. Yes.

Q. In the final analysis, who made the decision as to what equipment should be in the hotel?

A. I did.

Q. As the manager of the hotel?

A. Yes.

Q. Did you have any participation in setting up the secretarial charges at the Shoreham Hotel?

A. Yes, I did. I was employed by this company to work out a financial statement on the possible earnings and expenses of the hotel before it was finished, and during the 6 months prior to the opening of the hotel I had to work out this statement a[illegible]resent it to the banking company which was financing it, and also the owning company, as to what the possible earnings were, and of course the telephone department was one of the departments.

Q. And in setting up the prospective earnings of the hotel, you had a separate earnings statement for prospective telephone department revenue?

A. Yes. I took into consideration first the two main departments, the rooms and meals, and then all the service [fol. 388] departments.

Q. Well, now, what are included in the service departments?

A. Well, there is the telephone; the valet service; the laundry service; in the case of the Shoreham there is the

garage service; swimming pool; flower shops; drug store—and various sub-departments throughout the building.

Q. Outside of the service departments, the two sources of revenue are your room department and your food and beverage department?

A. Yes. In a hotel, the main business is rooms and meals. Then the supplementary service starts, and there is income coming from those other departments, but primarily we are in the room and meals business.

Q. But in your original set-up of the Shoreham Hotel, you had a provision for secretarial service such as you now have, and have had since the hotel was established?

A. Yes, sir. I put the same service charges in on the telephone that I had had at the other hotels that were under my management, and which were also in effect when I went in the hotel business back in 1918; and it just seems to have been the only logical way of passing on this expense to the people using the service, and not adding it onto rooms.

Q. Now the telephone department is an expense item? [fol. 389] A. Yes. When I set up the original statement, I set it up as an expense department. But, of course, to offset the expense we have income.

Mr. Plotkin: Your Honor, I think what Mr. McGarraghy is getting into is a question of reasonableness of the charges, which we don't think is at all relevant. What is involved here is a question of jurisdiction. If we have jurisdiction here, if this is a valid tariff, they are not allowed to make any charges except those contained in the tariff. If we do not have jurisdiction, whatever they charge is none of our business. I think this whole line of questioning is irrelevant, and I move to strike it from the record.

The Court: There are always two sides to every question, and in this case there may be three sides, and I think I had better let each side present its case and then we will face those questions at the end of the case.

That is the hotels' contention, that they have a right to render this service and charge for it. You have put in your contentions, and now we will hear them.

By Mr. McGarraghy:

Q. Now this expense item of your telephone department is not included in either your room charge or in your food charge to the public?

A. No, it is not.

[fol. 390] Q. It is set up as a separate charge to the people who use telephone service?

A. Yes.

Q. Now on yesterday you testified that you have recently changed, or sometime in 1943 changed, the policy with respect to collect calls?

A. Yes.

Q. Will you explain more in detail the circumstances under which that change in policy was made?

A. We changed the policy sometime during 1943. I testified yesterday that it was in the fall. Upon reflection I am not sure whether it was in the fall or in the spring, but is was during 1943.

The reason that we did do that is that we prepare monthly statements of operation in the hotel, and in the operating of the telephone department that department just kept growing and growing in the red, as we saw it, a loss. In order to find out what was the reason for it, we had to make a survey of the telephone department. In making it, we discovered that firms living with us, having suites permanently, and those that were coming in every week, had adopted the habit of reversing their calls, where prior to 1942 and 1943 they had paid us for the calls. And we were doing the same work and the same secretarial service and getting the calls for them, and getting nothing out of it. So that we had to offset this [fol. 391] expense, and the only way we could do that was to make the same surcharge on collect calls as we charged them before on prepaid calls.

We haven't had a complaint from any of the companies, and the explanation of the company representatives was to the effect that it was better accounting for them to have the charge reversed to their main office or shipyard or factory, and so forth, because it didn't go on the particular representative's expense account, it kept his expense account down, and they could keep a better record of the calls.

Q. Now you also testified that you had, in 1943, increased your maximum from $2 to $3.

A. Well, that came about for the same reason. The big calls—as you probably realize, it takes a very large call at our figure of 10 percent to amount to as much as $3, and that took into consideration the long distance calls to California and the overseas calls, and I think, as has been brought out once before, it sometimes takes 2 days to complete those. In the case of the calls to California, your operators are probably on the line 5 hours trying to get through an open circuit. All the time they are trying to get it, while your guest is downtown or attending to his other business.

We thought that again, looking at the financial statement and what it was costing us to operate, it was fair to [fol. 392] put that cost where it belonged, on the people who were asking for that service, and not spread it.

Q. In 1943, what was the cost of your labor and your telephone equipment?

A. Well, I could give it to you accurately, or I can give it to you from memory.

Q. Have you a statement covering that?

A. Yes, I have a statement covering that.

Mr. Plotkin: Your Honor, I think this is plainly irrelevant. If they are going to try the issue before Your Honor of whether these are or are not reasonable charges, that isn't involved here. We are perfectly willing to admit that if we have no jurisdiction over this matter they can charge anything they want, and don't have to make any justification. But if we do have jurisdiction, then they have got to live up to the tariff. I don't see why we should take time going into labor costs. If we don't have jurisdiction, they can charge a hundred dollars.

The Court: The Court very often thinks that way about a case, but there is a Court higher than this Court, so I think we had better have a full record here, so that each side will have all that it thinks fairly relevant in the record.

By Mr. McGarraghy:

Q. Mr. Moore, will you state what was your labor cost [fol. 393] and your cost of telephone equipment in the year 1943?

A. For the 12 months of the year—our fiscal year ends in September—in 1943 it was $21,895.62 for payroll.

Q. That means the telephone operators?

A. Yes, and supervisors. The equipment cost was $8,680.10. That is the cost that was charged us by the telephone company for the PBX board and for our extention stations.

Q. That does not include any other items of cost, such as overhead and rental of the space, heat and light, and so forth?

A. No, it does not.

Q. It has been testified that there are some public pay stations at the Shoreham. Can you tell me how many are located there?

A. We have 6 public pay stations that are connected directly with the telephone company. These stations are located, some in our main lobby right by the office, some at the elevators, some in the drug store, and one back by one of the other departments. We started off with two pay stations at the Shoreham, and then we increased it to 7 or 8, and I think we have had one taken out.

The matter of pay stations for the public, where they can directly call the telephone company, in past years has depended on what the public wanted, whether they wanted [fol. 394] to use them. The telephone company stood perfectly willing to put in booths, but it was a question of whether they would make enough money out of the booth to make it pay. So we just put them in as we saw fit, and took them out as we saw fit. If our guests wanted them, we would have had more.

Q. You now have 6, you say?

A. Yes.

Q. And there was a statement made that the hotels receive a commission from this form of equipment.

A. Yes, we do.

Q. That commission is paid for the privilege of installing the booth in the hotel, I believe?

A. Yes. I think it is a matter of rental for that space which the booth occupies.

Q. You don't have any control over those booths?

A. No. We don't collect the money out of the booth, we have no control, we don't even audit the money coming

out of the telephones. We just receive a check every 30 or 60 days from Booth No. 1, or No. 2, and so forth.

Q. Those booths are the property of the telephone company? You pay no rental for those booths?

A. Well, the booths themselves, some of them are the property of the telephone company—we built two booths originally.

Q. The equipment is the property of the telephone com-
[fol. 395] pany, and you don't pay any rental for the telephone instrument?

A. No, we do not.

Q. And of course, you do not operate it, because it is connected directly with the telephone company's switchboard and it does not go through your own switchboard?

A. That is right.

Q. I think you testified that the cost of this department is not included in the room rate that is charged the guest, or in the food and beverage charge that is charged the guest using the food and beverage?

A. No, it has always been a separate department; and that has been, as I say, an accepted practice in hotels, to keep it as a separate department.

Q. Now at the Shoreham, your room rates were posted under the provisions of the District of Columbia Emergency Rent Act, at the time that Act became effective?

A. That is right.

Q. And your charges for food and beverages are controlled by OPA?

A. Yes, we have to file our menues with the OPA office which froze our prices.

Q. As of what date?

A. April of 1943, I believe.

Q. April, 1943?

[fol. 396] A. Yes.

Q. Now, Mr. Moore, will you explain in detail the services that are rendered to the guests of the hotel, both with respect to incoming and outgoing long distance telephone calls, which are the basis of this extra charge or this secretarial service charge that you make to guests of the hotel?

Mr. Plotkin: Your Honor, I think the question is misleading. I think the second part of it is, where he says "which is the basis for these charges". That is a con-

clusion. I think he ought to ask him the various services rendered.

The Court: The first part of your question is entirely too broad. We are not going into that.

By Mr. McGarraghy:

Q. Will you state the secretarial services rendered by the employees of the hotel?

A. Well, we will tart with the guest going to his room and wanting to use the telephone for a long distance call. He can pick up the instrument and ask the operator to place a call for him to a city like New York or Chicago, such-and-such a number, and call such-and-such a person. If he does. . request it, he put through to the telephone operator, the toll telephone operator in the telephone company, our operator staying on the line to see that the call is properly handled and that the proper room number is [fol. 397] given, and she stays on the line until that call has started.

After the call is disconnected, she gets from the telephone company the proper charges, the name of the parties called and calling, and the time and the amount of the call, and the tax, and the service charge is added. And that is charged to the account.

If a guest wishes, and the majority of them do, that whole transaction is carried on by our telephone operator at the switchboard, and the guest merely calls and says, "Get me Mr. Jones at such-and-such a number in New York. She handles the call and he can go about shaving or getting dressed or having his breakfast, or what-not, and when that call is ready she rings the room phone and says, "We are ready with New York."

The other services that we render would go into almost the same category as those of a large office, where you have a number of offices and a central switchboard, and that operator being employed for that suite of offices. We have to take as many office messages as this man was getting back home. If he goes down town, he calls back to the hotel and leaves messages that he is going to be met, or wants to meet somebody at a certain place, if they call in. And it just goes on all day until our switchboard is loaded with messages; and for that reason, in addition to operators, we have to keep a chief operator and supervisors

[fol. 398] to handle these messages, which is, in our opinion, secretarial service. We think that our telephone switchboard is rendering more secretarial service than the average office renders in any place in the city.

I can give you a quick example. A man will try and try to get an office on the telephone downtown, and he can't make it, he has an appointment and has to leave, and we carry the call out, and when we can get it we tell them he is on his way.

The same is true with a long distance call. He tries to get his home office and can't reach it, and has an appointment with one of the Government departments, and leaves word with the operator to call them and give them a message, and she repeats that message to the home office.

So all day long our operators are performing the work that an operator would do in a large office or Government department.

Q. Do the operators receive messages for the guests and transmit them to the guests?

A. Yes, we receive and write down, and put into the mail box, messages for guests. We ask the question, "Do you wish to leave a message?" If they say "Yes", we write it down and put it in the mail box. Those messages, of course, are in a great number of cases of great importance, and the party must be reached. It sometimes is a matter [fol. 399] of dollars and cents, and also health, and messages from home, and so forth. Long distance calls come in while a man is busy in one of the departments, and we have to handle that message and see that he gets it when he gets home.

It is one of the most important things that the telephone department does, to see that those messages are properly written and are handed to the guest or reach the guest.

Q. If the guest happens to have left his room, either to go to some other part of the hotel—the dining room or barber shop or some other branch of the hotel—or outside of the hotel, does the employee of the hotel undertake to locate the guest and transmit the call to him?

A. Yes, that happens so often, now more than ever before because of the busy circuits. A man will place a long distance call and can't wait for it, he is going to the barber shop or going to have breakfast, and leaves word he will be in the dining room or in the barber shop, and there again

the message is put up on the switchboard, and as soon as that call is completed he is sent for, paged or called to the telephone, and it is reported to him that his call is ready.

Q. And that applies also if they have left the hotel and gone to some other part of the city?

A. Yes. In the telephone department we get these calls up to that switchboard, and from that switchboard on we have to go to work and do all of this extra work to reach [fol. 400] parties making calls, and so forth. It really becomes quite a task, and one that we can be seriously involved in if we do not do it right. The matter of responsibility is there in the handling of messages, and so forth, and we have to have competent people in that department to handle them.

If I could just go back to the statement again about the charge in the accounting end of it, that is one reason that we set this up originally, and why hotels have always set it up, that the people that are using the telephone the most are those that demand the most service on this incoming and this secretarial service. So out of fairness, we have always placed the charge against those people.

Q. Now you have pretty well outlined the services rendered. Is there any such thing as supervised service,—I mean, where a guest may not want a call and you have to control the calls that come in?

A. We have that happen continually. We can give the guest the protection that he would find in his own home, and that is that if he wants to rest, that telephone is shut off for a period of hours, or an hour or, for any length of time he wishes. He leaves word with the operator that he wants no calls, and he receives no calls.

It goes further than that. They leave word that they will only receive calls from certain people—if they call, ring them; otherwise not. Then, of course, we have the [fol. 401] very common thing of calling people, waking them in the morning by telephone. Those calls are left at night. There again, a long sheet has to be kept.

Q. Are there any other special services that the hotel renders its guests which you consider comparable to the secretarial service, for which an extra charge is made? I have in mind room service from dining rooms.

A. I think that you have named the one department that is comparable to this telephone service charge. If I might, I could go into a little detail on that.

Q. I wish you would.

A. In the matter of room service, we make an additional charge for meals served in the room. We have two items of charge, two methods of charges, rather. On the a la carte meal we charge 5 cents a portion for that meal served in a room; and on the regular meal we charge a fixed fee. That, in my opinion, is the same as the charge that we make on the telephone——

Mr. Plotkin (Interposing:) This is pretty argumentative, Your Honor.

The Court: I don't think we want to go into meal charges and serving them in a room, and so on. He may think it is the same as a charge on the telephone, but the Court can't see that. Don't go into that any further.

Mr. McGarraghy: I have no further questions.

[fol. 402] Mr. Plotkin: Just to have the record clear, does my motion to strike go to all the testimony——

The Court: The Court will overrule your motion. You can move to strike out this part or that part.

Mr. Gordon: If the Court please, we want to have it understood that we join in the objection to the testimony that had to do with possible reasonableness of the charges. The only reason I am mentioning that is that we want to be careful that no adjudication is made that might be used in some other proceeding, or something of the sort. We think that is wholly irrelevant and ask that it be stricken.

Of course, Your Honor will take that into consideration in the final ruling on the case.

The Court: The Court will overrule your motion. You may renew it at the close of the case.

Do you want to cross-examine?

Mr. Gordon: No, we have no questions.

Redirect examination.

By Mr. Plotkin:

Q. Mr. Moore, if I, not as a guest in your hotel, walked up to the desk at the Shoreham and asked to leave a message for John Jones, who is a guest in your hotel, your clerk would take that message, wouldn't he?

A. We would let you write the message and we would put it in his mailbox.

[fol. 403] Q. There would be no charge for delivering that message?

A. No, there would not.

Q. Either to the guest or to myself?

A. No, there would not.

Q. Do you have a public telegraph station in your hotel where guests or other people can send messages from?

A. Yes, sir.

Q. That is open to guests and members of the public?

A. Yes.

Q. Are any charges made for sending those messages?

A. The regular charge.

Q. Does the hotel make any charge over and above the telegraph charges?

A. No.

Q. How about when a message comes in for one of your guests, either collect or prepaid, is any charge made to the guest for such messages?

A. No.

Mr. Plotkin: No further questions.

Recross-examination.

By Mr. McGarraghy:

Q. Mr. Moore, in the case of telegrams, the telegraph company has an office in the hotel, is that right?

A. Yes, they rent a space from us and have their operator at that space.

[fol. 404] Q. And they have their operator there, it is not an expense item to the hotel in any sense, is it?

A. No, it is in the nature of an income.

Q. You don't pay for the equipment, and you don't pay for the operation of it?

A. No, we do not.

Redirect examination.

By Mr. Plotkin:

Q. But if a message comes in to a guest, it is actually delivered by the hotel to the room, isn't it?

A. Yes.

Q. And no extra charge is made for that?

A. That is right.

Mr. Plotkin: No further questions.

The Court: That is all. You are excused.

(Witness excused.)

The Court: Is there any further testimony from the defendants?

Mr. McGarraghy: Has the Plaintiff completed its case?

Mr. Plotkin: That completes our case.

The Court: He said that was going to be his last witness.

Mr. Plotkin: That is the end of our case, Your Honor.

Before Mr. McGarraghy proceeds, Your Honor, counsel have discussed this matter informally, and for the sake [fol. 405] of the record, in order to avoid putting on all 27 managers, on behalf of the Government we are willing to stipulate that if the managers of the other 26 hotels were called, they would testify in substance to the same arrangements in their hotels as Mr. Moore has testified to with respect to the Shoreham Hotel.

Mr. McGarraghy: We are willing to so stipulate, Your Honor.

Mr. Gordon: That is agreeable to us, Your Honor.

The Court: So all parties agree that it won't be necessary to produce any other manager of any of the other defendant hotels, and that if they were called, these managers of the other 26 hotels, they would testify to substantially the same effect as Mr. Moore of the Shoreham Hotel testified?

Mr. McGarraghy: That is correct.

The Court: That is agreed to by counsel for all parties?

Mr. Plotkin: Yes, Your Honor.

Mr. McGarraghy: That is right, Your Honor.

Mr. Price: Yes, Your Honor.

Mr. Gordon: Yes, Your Honor.

The Court: Very well.

EVIDENCE ON BEHALF OF THE HOTEL ASSOCIATION OF WASHINGTON, D. C., INC.

Mr. McGarraghy: Mr. Carson!

Thereupon,

[fol. 406] THOMAS D. CARSON called as a witness for and on behalf of the Hotel Association of Washington, D. C., Inc., having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McGarraghy:

Q. Mr. Carson, will you state your full name for the record, please?

A. Thomas D. Carson.

Q. You are President of the Washington Properties, Inc., which, as I understand it, owns the Wardman Park and Carlton Hotels, and also a number of apartment houses; is that correct?

A. And office buildings and other properties in the District of Columbia, owns and operates those properties.

Q. It was testified yesterday that for a period of time after this tariff went into effect, the Wardman Park Hotel accepted a commission on the long distance calls from the Wardman Park Hotel. Can you state to the Court what the facts are in connection with that?

A. I can, and would be glad to.

Mr. Plotkin: I don't think it is relevant.

The Court: That is going to bring up the question of an offer on the part of the telephone companies to try to settle this matter. Some people might regard it as an offer of [fol. 407] compromise, and others might regard it as a fair and equitable proposition to dispose of this matter and settle it.

Now if you want to get him to testify that they did that, I will allow him to do so for the time being, subject to your objection.

Mr. McGarraghy: I merely want to clear the record to show that it was an unintentional acceptance of it, Your Honor.

The Witness: The situation was this, Mr. McGarraghy. My company, in the month of March, had a great many men who went in the Army, including their general accountant. As a result, the general books of the company have not been posted for the months of February, March, or any part of April.

On the 10th of April, a representative of the Chesapeake & Potomac Telephone Company of Washington, a Mr. Siebert, came to our general office in the Wardman Park Hotel and asked for payment of a number of March accounts,—I should say on 10 or 11 buildings, running 6 PBX boards,

and a number of stations and other equipment which the company has installed in our properties.

He stayed around the office for some time. Finally, the Treasurer of Washington Properties, Inc., got together such telephone bills as were on hand, phoned some of the other properties—notably, the Carlton—and drew a check for [fol. 408] $14,000-odd, which said on the face, "As per stubs."

These accounts had not been audited, had not been posted to the books of account of Washington Properties, Inc., and merely represented, so far as the company was concerned, a payment on account at the request of the telephone company, so that the telephone company would not show a substantial amount past due from Washington Properties, Inc.

When and if those accounts are audited—and they will be audited eventually—we will show that we owe the telephone company, the company will show, some $622.94, I think it is, being a commission which was deducted on two of the 6 PBX boards covered by this.

By Mr. McGarraghy:

Q. I others words, your books will show that you still owe the telephone company that amount of money?

A. We will still owe the telephone company that amount of money.

Q. It was never an intentional acceptance by your company of the commission?

A. Not at all. We were advised by counsel not to accept it.

Mr. McGarraghy: That is all.

Mr. Plotkin: No questions.

Mr. Price: No questions.

The Court: You are excused.

[fol. 409] (Witness excused.)

The Court: Is the testimony on behalf of the hotel defendants closed?

Mr. McGarraghy: Yes, Your Honor.

Mr. Price: We have one brief witness, Mr. John Hanselman.

EVIDENCE ON BEHALF OF THE DEFENDANT TELEPHONE COMPANIES

Thereupon, JOHN J. HANSELMAN called as a witness for and on behalf of the Defendant Telephone Companies, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Price:

Q. Will you state your full name for the record, please?

A. John J. Hanselman.

Q. Please state your connection with the defendant American Telephone and Telegraph Company?

A. I was employed in the American Telephone and Telegraph Company in August, 1921, in the Commercial Division of the Operation and Engineering Department. I held various supervisory positions with that company. In January, 1942, I was appointed Sales Engineer of the company. In January, 1943, I was appointed Rate Engineer [fol. 410] of the company, which position I now hold.

My work consists of various matters relating to rates, tariffs, contracts, and other related matters in that category; and I consult with and advise the associated companies of the Bell System with regard to these matters.

Q. The long distance service furnished by the use of the facilities of your company is operated by what is known as the Long Lines Department, is it not?

A. That is correct.

Q. And are you generally familiar with the commercial relations and contractual and tariff matters handled by that department?

A. I am.

Q. I wish you would tell us whether, in connection with the interstate message toll service, including foreign service, which is the subject of this case, the American Company has any direct relations with the subscribers or persons who place those calls?

A. No, the American Company does not have any direct relations, in connection with message toll service, with any of the subscribers.

Q. Well, in connection with that service, does that company have, or to your knowledge has it had, any direct commercial relations with the defendant hotels in this case?

A. No, to the best of my knowledge it has not.

[fol. 411] Q. It has not, then, in any way designated them as its agents in that matter, I take it?

A. No, it has not.

Q. And also, will you state whether it has, to your knowledge, in any way authorized or approved the collection of any service charges or surcharges in connection with the interstate toll messages which the American Company participates in handling?

A. No, the American Company has at no time approved the collection of surcharges by any of the defendant hotels in connection with message toll service.

Q. And it exercises no control over the activities of the hotels in Washington in that respect?

A. None whatsoever.

Mr. Price: That is all.

The Court: The hotels don't make any report or render any account to you of the amounts that they charge for this extra service?

The Witness: No, sir, they do not.

The Court: You have nothing whatever to do with them?

The Witness: That is correct.

The Court: And we are talking about the American Telephone and Telegraph Company?

The Witness: That is right.

The Court: Do you know about the local company, The [fol. 412] Chesapeake & Potomac Telephone Company?

The Witness: Mr. McCoy has already testified that they, likewise, have nothing to do with it.

The Court: Well, you know it too, the A. T. & T. knows it, it is a subsidiary of yours?

The Witness: That is correct.

The Court: And you know that they have nothing to do with it?

The Witness: That is right.

Cross-examination.

By Mr. Plotkin:

Q. Mr. Hanselman, you are familiar with the toll tickets that are made out when a call is made, aren't you, a long distance call?

A. Generally.

Q. And where a call is made from the hotel, if it is made by a guest of the hotel, that shows the name of the guest and the room number of the guest, does it not?

A. Now you are getting just a little bit out of my field. I couldn't actually answer that question. I don't know.

Q. Would your recollection be refreshed if you saw a toll ticket?

A. Yes, yes indeed.

Q. I show you what purport to be toll tickets for calls [fol. 413] made from the Shoreham Hotel on February 15, and ask if that will refresh your recollection on the question I previously asked?

A. Yes, these tickets are similar to other toll tickets which I have seen covering calls originating at hotels, from hotel guests. They show the name of the calling guest, if it is a guest—I presume some of these may be management calls—and also the room number of the guest.

Q. The tickets that I showed you to refresh your recollection were toll tickets prepared by the telephone company operators, is that correct?

A. Those are telephone company toll tickets, that is correct.

The Court: Did you say by the telephone operators?

Mr. Plotkin: By the telephone company operators.

The Witness: By our long distance operators, the telephone company's long distance operators.

Mr. Plotkin: We have no further questions, Your Honor.

The Court: You are excused.

(Witness excused.)

[fol. 414] The Court: Is there any further evidence by the telephone companies?

Mr. Price: We have nothing further, your Honor.

The Court: Has the plaintiff anything further to offer?

Mr. Plotkin: No further testimony, but we would like to file a couple of motions to strike, whenever your Honor is ready.

The Court: I am talking about testimony.

Mr. Plotkin: We have no further testimony.

The Court: All parties state now that their testimony is closed?

Mr. Price: Yes, your Honor.

Mr. McGarraghy: We have nothing further.

Mr. Gordon: We have no further testimony, your Honor.

The Court: Now we will proceed to argument.

Mr. Plotkin: Would you rather have argument before hearing the motions to strike?

The Court: Yes. How much time does each party desire for argument?

Mr. Plotkin: I would think, your Honor, that probably thirty minutes should be enough for us, with the right to reply.

The Court: You may have that.

Mr. McGarraghy: Thirty minutes will be enough for us.

Mr. Price: That will be sufficient for us.

[fol. 415] The Court: You don't have to take the entire thirty minutes. (Laughter.)

Mr. Plotkin: On the question of briefs, do you have any preference on the matter of filing briefs?

The Court: I much prefer to listen than read. Put it all in your oral argument.

Mr. Plotkin: We do have a long list of cases; do you want me to read them into the record?

The Court: No, I want to hear about the facts and the law in this particular case. If you have one or two cases right in point, all right, but I don't want you to read in 25 or 50 decisions.

Mr. Plotkin: Nothing like that; but there are some very apposite cases which I would like to cite.

The Court: Call the Court's attention to the cases that you think are pertinent, but when I see a brief with fifty or a hundred cases cited, it is very incredible to my mind that there are that many cases in point.

Mr. Plotkin: We don't intend to do that, your Honor.

ARGUMENT ON BEHALF OF THE UNITED STATES

By Mr. Plotkin:

Mr. Plotkin: I don't believe there is any need to repeat the facts, I think we all know what the situation is about. It is just a question of the application of those facts in the light of the legal principles.

[fol. 416] Just to go back for a few minutes to the provisions of the Communications Act under which all this arises, I called your Honor's attention yesterday to Section 2 of the Act. That is a background section. Section

2 gives the Commission jurisdiction over all interstate and foreign communication by wire or radio, and all interstate and foreign transmission of energy by radio which originates and/or is received within the United States, and to all persons engaged within the United States in such communication, or such transmission of energy by radio, and so forth. There are certain exceptions with respect to the Canal Zone and so forth which aren't involved here.

The definition of "communications" is contained in Section 3 of the Act. I will read that at greater length later on in connection with my argument.

Section 203, which is the underlying section involved here, provides that all carriers engaged in interstate and foreign commerce shall file with the Commission schedules, tariff schedules, which show all charges for itself and connecting carriers, for interstate and foreign telephone communication, between the points on its own system and the points on the system of its connecting carriers. These schedules must also show the classifications, practices and regulations affecting these charges.

Then, once such schedules are filed, under Sections 203 [fol. 417] (b) and (c) no change can be made in the charges or in the classifications affecting those charges, nor can any other charge be accepted, nor can any other regulation, practice or classification be followed, except as set forth in the tariff.

The factual situation in this case comes down simply to this.

A tariff was filed on January 22, 1944, effective February 15, 1944. That is admitted. The terms of the tariff are admitted. Interstate and foreign telephone service is rendered to the hotels on the express condition that no extra charges will be collected from the guests when using such service, in addition to the charges set forth in the tariff. That is admitted. It is admitted that extra charges are being collected.

I think the only dispute between us and the hotels is—are those charges in connection with telephone service, or are they hotel charges over which we have no jurisdiction.

The over-all problem is simple. It has a rather long history, not only in this agency but in other agencies. The principle of public utility regulation is that once tariffs are filed they must be obeyed. If you want relief from tariffs

you must go before the administrative agency. That is not only good Communications law, but it has been true for years before the Interstate Commerce Commission, and it [fol. 418] has been true before all other administrative agencies that regulate public utilities through the form of tariffs. It is the only way you can get effective public utility regulation, if the parties are required to live up to the tariffs. Otherwise, you run into all the evils of rebat-s, preferences, discriminations, to solve which these various statutes have been enacted.

There is a multiplicity of cases on that proposition, and I will just cite two or three which are squarely in point. They are all decisions of the Supreme Court of the United States, your Honor.

The first decision is a decision in the case of *Crancer* v. *Lowden*, 315 U. S. 631; then *Lowden* v. *Simonds-Shields-Lonsdale Grain Co.*, 306 U. S. 516; *Director-General* v. *Vicose Company*, 254 U. S., 498; and *Robinson* v. *Baltimore & Ohio Railroad Co.*, 221 U. S. 506.

I would just like to spend a few minutes on the decision in *Crancer* v. *Lowden*, which I cited first, because it is so squarely in point.

That case involved a suit by a railroad to collect freight charges. The defendant in that case had shipped some merchandise which it classified and paid for as scrap iron. When it arrived at its destination the railroad made an inspection and determined that the merchandise really wasn't scrap iron but that it was pipe fittings. Pipe fit- [fol. 419] tings carried a higher rating, and the railroad sued to recover the charges for pipe fittings instead of scrap iron.

At the time of the suit the defendant in that case had a proceeding pending before the Interstate Commerce Commission which attacked the reasonableness of the charge for pipe fittings. Their contention before the Interstate Commerce Commission was that the rate charged was too high, that it was an unreasonable rate, a discriminatory rate. They came into court and said that since such a proceeding was pending before the Interstate Commerce Commission the court had no jurisdiction, or should postpone consideration of the matter, until the Interstate Commerce Commission had acted. The court refused to postpone the proceedings and the Supreme Court affirmed the

lower court's decision, saying that "Until changed, tariffs bind both carriers and shipppers with the force of law."

In other words, once a tariff is on file you have got to obey it, and if you think the tariff is unreasonable or discriminatory you proceed before the appropriate administrative agency for your relief there.

The other decisions that I read into the record hold exactly the same point.

The hotels, however, and the telephone companies are not in accord with this position of the hotels, contend that these tariffs are invalid because, on their face, they show that they are not charges for and in connection with tele- [fol. 420] phone communications service, but rather that they are for hotel service, over which the Commission has no jurisdiction.

There is, of course, no doubt that the hotels do render hotel service to their guests. Mr. Moore pointed out at great length the type of services that they rendered, and there can be no doubt that that is service that they render. But the fact does remain, and as the Commission in its report pointed out, the fact that they render these services may be the excuse, may be the reason, may be the motive why they want to reimburse themselves—but the fact remains that the charge is made against the person who uses interstate or foreign long distance service. They may call them from the dining room or from the barber shop, but the fact remains that when that individual makes a long distance telephone call, or receives one collect, he pays an additional charge, and that is a charge for and in connection with interstate communications service.

The defendants' argument, pointing to the various types of services that they render, completely overlooks, it seems to me, the comprehensive definition of wire communication which is contained in Section 3(a) of the Act, which I indicated I would refer to in my argument. That provision reads as follows:

"'Wire communication' or 'communication by wire' means the transmission of writing, signs, signals, pictures, [fol. 421] and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the

receipt, forwarding, and delivery of communications) incidental to such transmission."

To me it is difficult to see how a definition could more plainly cover the situation that we have involved in this suit here.

If I, as a guest of the Mayflower Hotel, for example, were to place a call from my room to a phone in New York City, it would appear to be crystal clear that the point of origin of the call, within the language of the statute, is my phone in the hotel room of the Hotel Mayflower, and the point of reception is the phone in New York City. The PBX and the operator at the PBX are simply instrumentalities, facilities, apparatus and services which are incidental to such transmission, within the meaning of the statute.

Your Honor yesterday raised the question as to what would happen with respect to the country grocer who went down the road to summon Farmer Jones to the telephone, and then charged him a quarter for doing it, and asked me what the Commission's position would be with respect to that. I think that is an apt illustration of what is involved here, an extension of what is involved here, be-
[fol. 422] cause the practices of the hotels represent exactly such a situation, except magnified.

Your Honor, of course, is familiar with the fact that there are many public places of business such as drug stores, lobbies of hotels, railroad stations, or any place where the public is likely to gather, with public telephones where the public can go in and make local or long-distance telephone calls. I think it completely ignores reality to say that whatever extra charges are made, they bear no relation to public telephone service.

In other words, if you multiply your country grocery store a thousand-fold so as to cover the situation where the potentialities of these conditions exist, you will realize what the collection of such extra charges, surcharges, can mean to telephone use.

There is also the further element. The one country grocer that you referred to might collect a very small charge, but if it is not subject to the jurisdiction of a regulatory agency he might collect an exorbitant charge. The hotels might do likewise.

Now in peace-time it might be argued that that might not be so important because people can secure direct tele-

phone service if they don't like the service that they get from the country grocer. I don't think that would be an answer, even in peace-time, but in war-time today, where it is impossible to get new telephone service in many situa-
[fol. 423] tions, these people who have control of facilities could charge whatever they wanted to if the public found it important enough to use their facilities.

That would be a complete breakdown, it seems to me, of public utility regulation in an important aspect of the field, it would be a hiatus in regulation. And the Communications Act, it seems to me, is pretty clear that the whole field of telephone communications, so far as it is interstate or foreign, should be subject to regulation, so that the charges for and in connection with such service should be reasonable.

I don't see how we could possibly do our job to see that such charges were reasonable, if an important part of such service were completely without our jurisdiction. As Mr. Moore testified here yesterday, and again on cross-examination, the Shoreham Hotel used to charge a maximum of $2.00; they are now charging a maximum of $3.00 on long distance calls. They used to collect a very nominal amount on calls made by a guest "collect." Now they charge the usual amount that they do on a prepaid call.

They did that without consulting anyone, without getting the consent of anyone. They did it purely because they found that they needed the money. That is not public utility regulation it seems to us, your Honor.

The point that was expressly considered by the Commission—these contentions which the hotels are making
[fol. 424] here were made before the Commission, and in its report the Commission adverted to it and had the following very apt language, and I would like to read it. The Commission said:

"These contentions (which are roughly the contentions that were made here) do not dispose of the fact that the surcharges in question are charges imposed only against the users of telephone service, that they are imposed only when telephone service is used, and that they are specific part of the charge made to the users of telephone service for such use. In other words, the surcharges are, for all practical purposes, collected for the use of telephone serv-

ice, regardless of what motives may impel the hotels, apartment houses or clubs to collect such surcharges."

Parenthetically, the consideration then before the Commission involved apartment houses and clubs, in addition to hotels. This proceeding is concerned only with hotels.

"If the collection of such surcharges were not subject to regulatory control, a subscriber, or anyone else other than the telephone company, who is permitted by the telephone company to control access to the use of a telephone, could freely resell interstate and foreign telephone service, imposing any charges of his own on such use. This would mean at least a partial nullification of effective public regulation of charges for interstate and foreign communication service, for there would then be a serious [fol. 425] hiatus in the safeguards against excessive and discriminatory charges to the using public. A hiatus of this nature would be squarely contrary to the intention evidenced in the Communications Act of 1934 that there be comprehensive regulation of charges for interstate and foreign communication service."

The contentions which the hotels raise here are not new. They have been making them for the past 25 years before the various state courts and state public utility commissions, in practically the same form as they are made here. In every single case these contentions have been expressly rejected. We have not been able to find a single case, and the hotels have never cited one either to the Commission or in earlier arguments here, where courts or commissions have agreed with the hotels.

I do not think it is necessary to discuss in detail all the authority which exists on this point. I would like to read the cases, there are seven or eight of them, into the record, and then discuss one of them.

People ex rel. Public Service Commission v. *New York Telephone Co.*, 262 App. Div. 440, 29 N. Y. S. (2d) 513 (1942), affirmed 287 N. Y. 803, 40 N. E. (2d) 1020; *Hotel Pfister, Inc.* v. *Wisconsin Telephone Co.*, 203 Wis. 20, 233 N. W. 617 (1930); *Connolly* v. *Burleson*, P. U. R. 1920C, 243 (N. Y.); *Re New York Telephone Co.*, 26 P. U. R. (N. S. 311) (1938), 30 P. U. R. (N. S.) 350 (N. Y. 1939); *Hotel Pfister* v. *Wisconsin Telephone Co.* [fol. 426] P. U. R. 1932B, 8, P. U. R. 1933C, 479 (Wis.); *Hotel Sherman Co.* v. *Chicago Telephone Co.*, P. U. R.

1915 F. 776 (Ill.); *Re Hotel Telephone Service and Rates*, P. U. R. 1919A, 190 (Mass.); *Re Hotel Marion Co.*, P. U. R. 1920D, 466 Ark.; *Jefferson Hotel Co. v. Southwestern Bell Telephone Co.*, 15 P. U. R. (N. S.) 265 (Mo. 1936).

The decisions that I have just referred to, your Honor, go back as far as 1915, and include state court decisions in New York and Wisconsin, and decisions of public utility commissions in Arkansas, Illinois, Massachusetts, Missouri, New York and Wisconsin.

I would like to spend just a few minutes in discussing the decision of *People* v. *New York Telephone Company*, the New York case that I referred to first. That case is exactly on all fours with the present case. That case also arose on an investigation. The investigation was ordered by the New York Public Service Commission.

The subject of the investigation, as with the one here, was the service charges which were being collected by New York hotels on local cal-s and intrastate long distance calls. Of course the New York Commission would have no jurisdiction over interstate calls.

After hearing, the New York Commission decided that some surcharges could properly be allowed to be collected in those cases, but decided that they should be included [fol. 427] in tariffs on file with the New York Commission. In that case, as in this case, up to the time of the investigation there were no tariffs on file which specified these surcharges.

The Public Service Commission ordered the New York Telephone Company to file tariffs with the Commission in which the maximum surcharge on local calls should be five cents—in other words, a ten cent charge to be made on local calls—and on intrastate long distance calls, a surcharge of five cents could be charged on calls up to fifty cents, and ten cents on calls over 50 cents, that is, intrastate long distance calls.

The New York Telephone Company did not appeal that order but filed the tariffs as required by the New York Commission's order. The hotels apparently were satisfied with that portion of the order which allowed them to collect ten cents on local calls, but it appeared in that case that they had been collecting more than the five and ten cents allowed by the new tariffs, and with that portion of the order they were not satisfied. And the hotels, or at least some of them, proceeded to collect their old schedule

of surcharges the same as they had before the New York Commission had entered its order.

The upshot of the matter was that the New York Commission brought enforcement proceedings against the telephony company under statutory provisions which are sub-
[fol. 428] stantially the same as those which are involved in this suit.

The hotels in that case were not originally brought in as defendants, but the telephone company filed a motion requesting that since the relief requested affected in such a direct way the hotels, as well as the telephone company, that the hotels should also be enjoined as defendants, and they were enjoined as defendants.

The New York Supreme Court issued an injunction against the telephone company and against the hotels both, enjoining the collection of any charges for intrastate calls, other than those set forth in the tariffs.

The telephone company was also ordered to enforce the terms and conditions of its tariffs. In successive appeals this judgment was affirmed, first by the Appellate Division and then by the New York Court of Appeals.

All of the arguments which the defendant hotels made here and which it made before the Commission, they also made before the New York Public Service Commission and before the courts. The Appellate Division expressly rejected such arguments, saying:

"A telephone within a hotel, used to furnish service in connection with outside calls, must be considered as an extension of the telephone company's general system and subject to regulation; otherwise the public will be subjected to a variety of rates concocted under the guise of hotel
[fol. 429] service and completely unregulated. To avoid such an evil is one of the main purposes of the statute."

The New York court recognized, as the Commission has pointed out here, that if, under the guise of hotel service you can collect any charges that you want, public utility regulation breaks down in a very important aspect of the field.

All the other state cases which I have cited have the same line of reasoning running through them, that the hotel service, which the hotels do render, has nothing to do with the case, that the charge is made when you make a

telephone call and if that is not going to be regulated, public utility regulation will be ineffective.

In the related fields of gas and electricity distribution, which are fairly analogous to ours, the courts and commissions have also reached the same conclusions. The problem involved in those fields is concerned with re-metering. Apparently it formerly appeared to be a fairly common practice for business houses, apartment houses and so forth, to buy gas and electricity at wholesale rates, and then resell it to their tenants, either at a profit, or at cost, but generally at a profit.

The gas and electric companies combatted this tendency by adopting regulations which forbade re-metering. In other words, unlike the present case where the telephone company says to the hotel, "Yes, you can use PBX service [fol. 430] (which involves reselling, as it were) but you can only charge what we charge," the gas and electric companies have gone further. They say "You can buy only service for yourself, but you can't remeter it." In other words, they have offered service to their customers on the express condition that it would not be resold.

Regulations of this type have uniformly been upheld by the courts and commissions which have considered the problem.

The decisions on this point, your Honor, are:

Lewis v. *Potomac Electric Power Co.*, 64 F. (2d) 701 (App. D. C.); *Karrick* v. *Potomac Electric Power Co.*, P. U. R. 1932C, 40 (D. C. Sup. Ct. 1931); *Florida Power & Light Co.* v. *State*, 107 Fla. 217, 144 So. 657 (1932); *Sixty-Seven South Munn* v. *Public Service Electric & Gas Co.*, 106 N. J. Law, 45, 147 Atl. 735 (Sup. Ct. 1929), affirmed 107 N. J. Law, 386, 152 Atl. 920 (Court of Errors and Appeals 1930), certiorari denied 283 U. S. 828; *Public Service Commission* v. *J. J. Rogers Co.*, 184 App. Div. 704, 172 N. Y. S. 498 (1918); *People* v. *Public Service Commission*, 191 App. Div. 237, 181 N. Y. S. 259 (1920), affirmed 230 N. Y. 574, 130 N. E. 899 (1920).

There are two decisions on this point right here in the District of Columbia. First I refer to *Lewis* v. *Potomac Electric Power Company*. That case was decided by our Court of Appeals here in 1933. That case involved a complaint of an owner of a store and office building, seeking to enjoin an electric company from cutting off electric [fol. 431] service. The electric company had formerly sold

electricity to this owner at wholesale rates, and then the owner proceeded to resell it at retail rates. Subsequently, the electric company adopted a ruling, which was approved by the Public Utilities Commission of the District, after a hearing, which prevented remetering or reselling of electricity. Plaintiff refused to sign the contract embodying these terms, and brought suit. The court sustained the validity of the rule, wherein the court pointed out that effective regulation would be impossible if owners could resell electric service.

The hotels also make two subsidiary arguments in support of their contention that the Federal Communications Commission has no jurisdiction over the tariffs filed. They state that the tariff in question relates to telephone exchange service within the meaning of Section 221(b) of the Communications Act. Under Section 221(b) of the Communications Act the Commission is deprived of jurisdiction in those cases where, even though the telephone exchange service is interstate, the telephone exchange is subject to regulation by a state commission.

There are two answers to that point as to why Section 221(b) doesn't apply.

In the first place, note that Section 221(b) deprives the Commission of jurisdiction only if an appropriate state or local authority has jurisdiction. The hotels have filed suit also in the District Court contending not only that we [fol. 432] don't have jurisdiction, but that the District Commission doesn't have jurisdiction. Now if they are going to rely upon Section 221(b) it would seem to me that it had no application at all if the District Commission has no jurisdiction.

But over and above that point, I think their argument has no validity, it just completely misreads Section 221(b) it seems to me, and just distorts the facts before your Honor.

Section 221(b) excepts from the Commission's jurisdiction telephone exchange. "Telephone exchange service" is defined in Section 3(r) of the Communications Act as follows:

"'Telephone exchange service' means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of

the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge."

"Telephone toll service" is defined in Section 3(s) as follows:

" 'Telephone toll service' means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."

I think it is pretty clear—to get back to my illustration where I am a guest in the Washington Hotel—that if I make a call from my room in the Washington Hotel, to a [fol. 433] party in New York City, that, in the words of the definition I have just read, I am making a call from a station in one exchange area, which is the Washington Exchange Area, to a station in another exchange area, the New York Exchange Area, for which a separate charge is made, a separate toll charge, which is not included in the contract for exchange service.

I should point out that the tariffs of the telephone company which are on file with the Federal Communications Commission—Exhibit No. 1 in this record, which contains both the tariff provision of the Chesapeake & Potomac Telephone Company and of the American Telephone & Telegraph Company—they expressly recognized this point when they referred to the fact that the toll service charge specified in their tariffs are payments for all services which are furnished between the calling phone and the called telephone.

This being so, the type of calls that we are concerned with here is clearly toll service and not telephone exchange service; and hence Section 221(b) has no application at all.

The Court: Your time is about up, but you can have a few more minutes.

Mr. Plotkin: Thank you.

The defendants also argued that the Commission has no jurisdiction because the Emergency Rent Act has removed all jurisdiction from the hands of the Commission to the hands of the District Rent Administrator.

[fol. 434] There is nothing in the Rent Act which mentions the Communications Act, or which gives the Rent Administrator any control over public utility matters or over communications matters.

They have argued in the past that they couldn't raise or lower service charges without going to the Rent Administrator. I think Mr. Moore's testimony has sort of exploded their own argument on that very point.

The second point which the hotels make is that they have a complaint pending before the Federal Communications Commission which challenges the reasonableness of the tariff. They say that the tariff is discriminatory, that it is unreasonable. They do have such a proceeding pending, but under the decisions, that I have cited, and particularly under *Crancer* v. *Lowden*, once a tariff is filed they have to comply with it. True they have to get the relief from us, but the filing of a complaint for relief with us does not excuse them from complying with the tariff.

As a matter of fact, any such doctrine, if logically extended, would just encourage shippers, in the case of the ICC, or telephone users, in our case, to file complaints before the Commission and then proceed to violate the tariffs, and then tell the court, "Well, we have a complaint pending before the Commission; you have no jurisdiction until that proceeding is over."

[fol. 435] The final point that the hotels make is that they have filed a proceeding before a special statutory three-judge court under Section 402(a) of the Communications Act, to set aside the Communications Commission's order and report of December 10, 1943, which required the filing of tariffs.

Now that suit is brought, not by the hotels as such but by the Hotel Association of which all the defendants here, the hotel defendants, are members. No preliminary injunction was sought in that case and meanwhile the hotels are proceeding to violate the tariffs. In other words, it is a corollary to the other argument, "We are in another court seeking relief; meanwhile we are not complying with the tariff, but this court has no jurisdiction because we are seeking relief in another case which affects the Commission's order."

I may point out that Section 402(a) relates to suits to enforce, enjoin, set aside or annul orders of the Commission.

Now the only order that is involved in this case is an order to the telephone company to file tariffs. They have filed tariffs and therefore we are not seeking the enforcement

of an order. That is why we are not in the 402(a) proceeding, the three-judge court.

What is involved here is a violation of the Act because charges are being collected in violation of the tariff, and Section 401(c) expressly authorizes the bringing of such suits before your Honor.

[fol. 436] Just referring briefly to the one point which the telephone companies make, and that is that they see no reason why an injunction should be issued against them—they admit that the tariff is valid but they say they are not responsible for the acts of the defendant hotels, and that it would be inequitable to issue an injunction against them.

In the first place, as I indicated yesterday, the Commission in its report found that the hotels, in collecting these surcharges, act as agents for the telephone company.

Now there are three important factual proofs of that agency. The first one is that the Commission found, in its report, that while the hotels are designated as business subscribers, one of the conditions of the service rendered to the hotels is that all telephone operations on the telephone premises must conform with the rules and regulations which the telephone company may adopt to maintain a proper standard of service. And as Mr. McCoy indicated here, while they don't enforce it as such, in a very delicate way they do go around from time to time to make sure that operation of these boards is satisfactory because, as he pointed out, the telephone company is very vitally interested in seeing that good telephone service gets from one instrument to another instrument.

The second indication of agency is the so-called "skipper" provision that I referred to yesterday. That is the tariff provision which says that all subscribers with the [fol. 437] exception of hotels catering to transients, must pay over to the telephone company the telephone company's charges for all calls which are made from that instrument, or received collect at that instrument. In the case of such hotels, however, they only have to turn over the money if they actually collect it themselves.

Finally, another indication of agency is a provision which has been in the telephone company tariffs for about a quarter of a century, to the effect that hotels shall not make any charge for telephone messages from stations

accessible to the general public, or to guests generally, in an amount in excess of their charge for such service from a public telephone in the same exchange.

If, as we maintain, and as the Commission found, the hotels are agents for the telephone companies, Section 217 of the Act expressly provides that they are responsible for the acts of their agents, and an injunction against them is proper. I won't bother to read Section 217.

However, even if they are not the agent of the telephone company, the Commission found that they are subscribers. We made an alternative finding, a completely independent, alternative finding, that either they are agents, or they are subscribers. If they are subscribers, they can receive only subject to the conditions that are attached. One of the conditions is that they make no extra charges to their [fol. 438] guests for interstate or foreign long distance calls.

Now if the telephone company continues to furnish service to the hotels, knowing that the hotels are violating a condition of the tariff, then the telephone company, it seems to me, is in the position of furnishing service not in accordance with its own tariffs.

Now the telephone company, as I indicated yesterday, has two methods open to it by which it can secure relief against the hotels. It can either cut off service, which would be immediate relief; or they can seek an injunction against the hotel companies. The cases I have cited under the remedying proposition, shows that clearly that relief is open to them.

If they don't want to seek either of those remedies, it seems to us that we are clearly entitled to an injunction against them to make sure that the hotels do obey their tariffs.

Before concluding I should like to say a few words concerning the weight which, under the authorities, must be accorded to the determination which has been made by the Federal Communications Commission in this proceeding, in the proceeding before it, I mean.

As I have already pointed out, the principal issue in this case, really what the whole lawsuit is about, is whether these charges are for and in connection with telephone communications service. We say it is, and they say it is in connection with hotel service.

[fol. 439] The Commission, after a full hearing, concluded that these charges are for and in connection with communications service.

It is our view that the Court must accept this determination if it is supported by substantial evidence and is not arbitrary or capricious. In other words, in cases where an administrative agency has already made a determination on one of the issues involved in a suit, the court is not at liberty to substitute its judgment for that of the Commission. Its function is to determine whether there is evidence before it to support the findings which have been made by the Commission.

The leading authorities on this point, your Honor, are as follows:

Tagg Bros. & Morhead v. *United States*, 280 U. S. 420; *Acker* v. *United States*, 298 U. S. 426; *Gray* v. *Powell*, 314 U. S. 402; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125; *Shields* v. *Utah Idaho Central Railroad*, 305 U. S. 177; *Houston* v. *St. Louis Packing Co.*, 249 U. S. 479; *cf. Borden Farm Products* v. *Ten Eyck*, 11 F. Supp. 599, affd. 297 U. S. 251.

In conclusion, your Honor, I believe we have shown that the action of the defendant hotels in making these charges against their guests in connection with interstate and foreign long distance calls, is in violation of the Communications Act, and that an injunction should be issued against [fol. 440] both the telephone companies and the hotels.

The Court: When you speak about an injunction against both of them, the New York case you read from said that the telephone company and the hotels were enjoined from overcharging. But in one of your prayers here it is indicated that you would want an injunction prohibiting the telephone company from rendering any telephone service to hotels which violate the tariff. Have you any authorities sustaining that?

Mr. Price: That is exactly what the New York case was, your Honor. The issue there was whether a mandatory injunction should be issued to require the telephone company to cut off its service.

The Court: And it didn't issue?

Mr. Price: It was issued.

The Court: You mean that they compelled the telephone company to cut off service?

Mr. Price: Yes, your Honor.

Mr. Plotkin: They ordered the telephone company to enforce its tariffs, in other words, if the hotels persisted in violating the tariffs, to cut off service.

The Court: I didn't understand that from the way you read it. I understood you to say that the telephone company and the hotels were enjoined from overcharging.

Mr. Plotkin: If I may restate it——

Mr. Gordon (interposing): We are going to go into that [fol. 441] case; it is a totally different kind of case, if the Court please.

Mr. Plotkin: We don't want the telephone companies to cut off service to the hotels; but we do think that the tariff should be enforced.

The Court: You pray for that, don't you?

Mr. Plotkin: In the alternative, your Honor.

The Court: Well, I just wanted to bring that out.

Mr. Plotkin: If I may make one point on that. If, as the hotels maintain, they are not proper parties defendant—we think they are because, after all, the real relief in this case is sought against the hotels and if we had not made them parties defendant it would seem to me that the Court should have brought them in as party defendants, they are vitally interested in this case and under decisions of the Supreme Court if they are vitally interested they have to be brought in—but if they contend that an injunction cannot run against them, then our only injunction can run against the telephone company to require the telephone company to enforce its tariff, and the only way it can enforce its tariff is by cutting off service.

That is why the alternative relief was in there. We don't desire to have that drastic alternative relief.

Mr. Gordon: Are you ready to dismiss the case as to us?

Mr. Plotkin: No, because we think there should be an [fol. 442] injunction against the hotels and against the telephone companies, requiring the telephone companies to enforce the tariffs.

Now as a practical matter what that means is this, that if an injunction is issued, and the hotel companies stop collecting the surcharges, you are clear; if the hotel companies still persist in collecting surcharges, then the injunction would require you to cut off service.

The Court: Very well. Proceed, Mr. McGarraghy.

ARGUMENT ON BEHALF OF THE HOTEL ASSOCIATION OF WASHINGTON, D. C.

By Mr. McGarraghy

Mr. McGarraghy: If your Honor please, in my opening statement I undertook to summarize our contentions that we would make, and so I will not repeat those that I made in my opening statement.

It seems to us that, fundamentally, the trouble with the plaintiff's case, both in the hearing before the Commission and the findings of the Commission, and the argument of counsel here today, is that it is an attempt to enforce a philosophy that these charges ought to be regulated, and since there appears to be no other agency regulating these specific charges, in order to protect the public from some possible overcharge, they step in and assert jurisdiction because they say they ought to be regulated. Now if they ought to be regulated, that is a matter for Congress to pass upon.

[fol. 443] There, of course, is no showing that the charge has ever been abused; there is no showing that it has ever been made the basis of excessive charges against the public; there is no showing that the public has ever complained about the matter.

As a matter of fact the showing is that over many years the charge has been in effect, and as Mr. Moore pointed out, it is a charge which does not entirely compensate the hotel for the expense that is incurred in that department.

So we start off with the proposition, which it seems to me as far as our case is concerned is fundamental, as to whether or not they ought to be regulated at the present time.

Of course your Honor knows that we have a Rent Administrator here and I digress for a moment to answer counsel's point on that. He says that we claim that service charges are subject to regulation by the Rent Administrator. We claim that the room charges of the hotels, under the Rent Act, are regulated by the Rent Administrator. Under that Act we were required to post our rates as of January 1, 1941, and file a schedule with the Rent Administrator, and thereafter not to change those rates without the approval of the Rent Administrator, and then only to change those rates

upon a showing either of increased capital expenditures—I think that was the only reason. Now we say that the room rates are regulated by the Rent Administrator; we say that [fol. 444] the food and beverage rates are regulated by the Price Administrator. We say that we have an expense item—in the case of the Shoreham Hotel approximately $30,000 a year—of actual out-of-pocket expense in the cost of this operation which has heretofore been and is now being recouped in part by this charge for this service, and which, if eliminated, could not, even if we would, be applied to one or the other sources of revenue that the hotels have.

I digressed a moment because that thought occurred to me at the moment.

The question is: Does the Federal Communications Commission have jurisdiction over these charges? Now the Act gives the Communications Commission jurisdiction over carriers. They, to enforce their belief that they ought to assert jurisdiction, find an agency and assert jurisdiction over us on the theory that we are agents.

Now certainly there is no evidence in this case warranting a finding that the hotels are agents of the telephone company. There is no contract of agency. We are completely independent; we are debtors of the telephone company the same as every other PBX subscriber is a debtor of the telephone company, paying the same rates to the telephone company that everyone else does.

And on that point—because I think it is, of course, the heart of the case—counsel refers to the New York decision [fol. 445] as authority for your Honor here. In that case there was an express agency by agreement, between the telephone company and the hotels, and on the basis of that agency jurisdiction of the Commission was asserted and sustained in the courts.

And in that case, your Honor, the court said:

"The hotels undoubtedly have the right to charge their guests any amount they please for hotel services or for secretarial services generally, even if these involve reaching other parties by telephone. These matters are not the concern of the Commission."

But on the basis of an agency the court held that, for the telephone service, as distinguished from secretarial

service, or hotel service, they were limited to the five and ten cents which the telephone company in its tariff provided that the hotel companies might charge their guests. But here, where we have a tariff which says that we may not make any charge in addition to the charge which we pay to the telephone company, we may not in any way recoup this loss, this expense item that we have.

Counsel has argued the general law of public utility regulation, and the necessity that tariffs, once filed, shall be enforced until set aside by the Commission. But that, your Honor, doesn't mean any tariff—that means a lawful tariff.

Suppose the telephone company should have been or- [fol. 446] dered by the Communications Commission, or of its own motion should have filed a tariff saying that the hotels shall not charge more than a certain amount for rooms, and shall not charge more than a certain amount for meals, or shall not do any one of a hundred things that relate to hotel management. Would counsel contend that because that tariff had been field, we would have to obey it until we had it set aside in a complaint proceeding brought for that purpose, on the ground that it was unreasonable?

Where a tariff is unlawful, where it undertakes to regulate something without the jurisdiction of either the commission or the telephone companies, certainly it cannot be contended that it has the force and effect of law so that the hotels have to respect it until such time as it shall have been set aside.

So we get back again to the fundamental question in this case as to whether or not the hotels are subject to the jurisdiction of the Federal Communications Commission, and unless we are an agent—and I say to your Honor that there is no evidence of agency here—the Commission has no jurisdiction over us. Of course Congress might well decide that there should be a regulatory body to regulate the rates to be charged by hotels. But as I say, we are now rather substantially regulated at this time. In normal times we are not; we don't have a Rent Agency for hotels, [fol. 447] fixing the room rates—but we do now have one, both as to our rates for rooms, and as to our charges for meals. As to secretarial services, as Mr. Moore pointed out, even this service charge is not uniform. The Hotel

Association does not undertake to make a uniform rate for such services; it is a competitive rate, based on the type of service given and the size of the hotels.

Counsel agrees—and I think I made a note to use his precise language—"Are these charges for and in connection with telephone service or are they for hotel service?" And he says that if they are for hotel service then they are not within the jurisdiction of the Commission and the plaintiff should not prevail in this case.

Well, now, your Honor, certainly on the record in this case those charges are for hotel service, they are for services rendered guests in addition to the telephone service; they are for services rendered the guest which the telephone company by its tariffs cannot render.

Mr. McCoy testified yesterday—and the tariff supports his testimony—that a telephone company is prohibited by its own tariffs, which are on file with the Communications Commission, from rendering any one of the multiple services rendered by the hotels, and for which this charge is made.

The Court: Do the hotels have to render these services?

Mr. McGarraghy: Are we required by law to render them?

The Court: By any law?

[fol. 448] Mr. McGarraghy: No, your Honor.

The Court: Couldn't you do without rendering them?

Mr. McGarraghy: Well, I think as a matter of operating a hotel in modern times it would be rather drastic for us not to offer this service.

The Court: You do it to serve your patrons and guests better, in competition with other hotels?

Mr. McGarraghy: Yes.

The Court: One hotel tries to get the patrons from another, isn't that what is back of it?

Mr. McGarraghy: I think we all have to render these services, but we necessarily have to find some way to charge for them.

The Court: I don't know that you have to render these services, what compels you to do it?

Mr. McGarraghy: Nothing, except the matter of rendering service to our guests.

The Court: It is competition, isn't it?

Mr. McGarraghy: That is right.

The Court: That is the motive back of it, isn't it?

Mr. McGarraghy: That is right. We render these services, and I think that is fundamental in any hotel, which is a service industry, that we do render these services and charge for them.

The Court: Not always—there are a lot of things that [fol. 449] are rendered free so as to attract customers. A child comes into a grocery store with his mother, and the grocer gives him an apple to please him and to please the mother.

Also the man down the road that we spoke of yesterday—the grocer may agree within himself not to charge him the 25 cents because the man is a customer. So he lets the little colored boy, or his son, run down there and tell the man there is a call for him, and he may not charge anything. He does that so as to keep him as a customer from the other crossroads grocery five miles away.

Mr. McGarraghy: That is right, and presumably he gets compensated for that in some other manner.

The Court: Well, he sells him groceries and makes a profit on those.

Mr. McGarraghy: Yes. In this case it is an expense item for us and we obviously can't incur it without having some way of getting it back. As I say, we can't get it back either from our room or food charges.

The Court: What do you say in regard to the matter of the hotels charging 10 per cent of the toll charge, or 20 per cent or 50 per cent, or even 100 per cent—what is to keep them from doing that?

Mr. McGarraghy: That is competition.

The Court: So that is the only thing?

Mr. McGarraghy: That is right.

[fol. 450] The Court: When a person checks out of a hotel and is paying his bill, either by check or by handing green bills across the cashier's counter, how often does he look at the charge for long distance calls? And even if he did, what would he know about it? He wouldn't know the rate per minute from here to Pittsburgh, or from here to Scranton, and he wouldn't know how many minutes he had talked. He just pays the bill and doesn't notice that there is any extra charge being slapped on there by the hotel.

Mr. McGaraghy: Oh, yes, it is on the bill.

The Court: I saw the bills there. There is nothing on them to show that there is something extra that the hotel is charging.

Mr. McGarraghy: The voucher says a "service charge."

The Court: It is not on the bill.

Mr. McGarraghy: It is on the voucher that supports the bill.

The Court: The testimony is that the voucher isn't delivered unless it is asked for, and it is seldom asked for.

Mr. McGarraghy: It is delivered when it is asked for.

The same thing applies on restaurant charges. If you will look on that bill, you will see some restaurant charges. You don't have the breakdown of the restaurant charges on that bill, you have the restaurant charge. If the guest [fol. 451] wants the breakdown, we have the voucher to support it.

The Court: I am talking about the practical side of it. I have gotten many a bill from a hotel, and I never looked at the amount for long distance calls, or whether they had added on 10 percent or 20 percent or 50 percent, I just paid the bill.

Mr. McGarraghy: I don't think there has ever been a case, so far as I know, where the charges amounted to more than 10 percent. Of course, we might assume that they might charge more, but there is no evidence that they do charge more.

I want to go on with this legal discussion.

The Court: Go ahead.

Mr. McGarraghy: Mr. Plotkin says that the point of origin—and he has got to make this point in order to prove his case—that the point of origin is in the room rather than at the PBX board, the point of origin of a long distance call. It is agreed that the PBX board in the hotel is the same as the PBX board in my office or in an apartment house, store, or what-not. Certainly if I have my secretary make a long distance call from the PBX board, the point of origin is from the PBX board and not my phone. She is acting for me in making the call. That being the point of origin, what transpires within the hotel is not within the jurisdiction of the Federal Communications Commission.

[fol. 452] Now in this case, as I said at the opening, the jurisdiction of the Commission was asserted on the ground

of agency; but the tariff which they seek to enforce is not an agency tariff, but is a subscriber tariff. They say "You may not charge anything, as a condition of service, other than the charge which you pay us. What you are now charging must be cut off. And there is no provision for compensation for the service that you render in any way."

Reference has been made to these remetering cases. Those remetering cases obviously were merely cases where the electric current was being remetered and delivered to the other party. In this case there is something more than that being done, there is a service being rendered. All of these services that are mentioned are the things that are being charged for.

Now, if Your Honor please, whether we ought to charge for this service or not it seems to me ought to be beyond the point in this case, if in fact the charge that we are making is for that service. It could well be that as a matter of management the hotel would say, "We won't make this charge, we will absorb it in our room rent, we will absorb it in some other way. We will", as Your Honor says, "treat it as a matter of good will and business promotion, or competition, or whatever it may be." That is management. It may be that your Honor will disagree with [fol. 453] the hotel, or someone else—as the Commission did—will disagree with the hotel, that they should make these charges. But if it is a charge for hotel service, if it is a charge for secretarial service, then it isn't subject to the jurisdiction of the Commission. Your Honor has got to find that it is a charge for telephone service before the Commission has jurisdiction, and that it is a charge for telephone service before it comes under the tariff as in violation of the tariff, because the tariff says that toll messages shall not be subject to any charge for such service other than the charge of the telephone company. Now this is a charge for something other than for that service, and it doesn't come under the tariff. It is not in violation of the tariff even assuming that the tariff is a lawful tariff and within the jurisdiction of the Commission to order the telephone company to file.

As I say, the case which counsel relies upon, the New York case, which he says—and I think I can use his language—is on all fours with this case, is a case where there was an express agency relationship in writing between the telephone company and the hotels, and it was on that basis

that the jurisdiction was asserted; and even then, there was an allowance to compensate the hotels for that service, which does not exist in this case.

I wonder if Mr. McCollester wants to add anything to what I have said?

[fol. 454] Mr. McCollester: I don't think I will impose on His Honor.

The Court: The telephone companies?

ARGUMENT ON BEHALF OF THE DEFENDANT TELEPHONE COMPANIES—By Mr. Price

Mr. Price: May it please the Court, the tariff provision involved here says: "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

There has been some question about what that means, and I want to speak to it for just a moment. It means that no charge can be attached to the use of the service by the hotel except the tariff charge of the telephone company. So that it is a regulation that relates to collecting a charge in connection with our service. That is all it is. It doesn't specify what the charge is for, it merely means that the use of the service is not to be made subject to the charge.

So that if a hotel wants to collect from a guest for something that it does, let it collect in any way it pleases so long as it doesn't hook that charge onto the charge for [fol. 455] our message, which we think has certain objectionable features.

Now Your Honor spoke yesterday about the situation of the country grocer who allowed somebody else to use his telephone. This tariff provision is drawn to apply to the case where there is a real need for it, namely, the case where a substantial number of people, a considerable segment of the public, are using the service furnished to the hotel, and where surcharges are in fact imposed; and it does not apply in other cases, because there isn't any prac-

tical need for it. It is intended to deal with an actual situation.

This is a suit to enjoin violation of that provision. It seems to us that it presents only this question: Is the tariff provision valid, and (from our point of view) should the telephone companies be enjoined from violating it?

Now we think the tariff provision is valid, because it is a proper regulation of the use of the service furnished to the hotels as subscribers. It is like other regulations that are in telephone company tariffs or railroad company tariffs, relating to the furnishing of the service.

For example, it is like, in general, the rather common regulation to the effect that where a flat rate service is furnished for residence use, the use of the service is restricted to the subscriber, his family, and employees acting [fol. 456] in his interest.

So it isn't a question here, as we see it, of an attempt to apply the Communications Act to charges made by the hotels at all. It is only a question of whether we have a valid tariff provision which imposes a regulation relating to the use of the service by these particular subscribers.

Now it was argued here at length by the plaintiff, as I understood the argument, that this was a matter of exercising jurisdiction by the Federal Communications Commission under the Act, and that these charges had to be regulated in that way. Well, we are not unsympathetic with the feeling of the Federal Communications Commission that some method should be found to control these charges. On the other hand, we dissent very vigorously from the proposition that they can be regulated in that way as charges subject to the Communications Act, because, while they may fit the language of some definitions, they are not charges of a carrier, and we think the Act is aimed only at the services and the charges performed by the carrier itself. As the evidence shows here that is not the case.

So I come to the question of what the Court should do with this as a regulation applying to the use of the service by the subscriber. It has been said, and I want to repeat, that it isn't a question, apparently, of whether the regulation is reasonable. It is only a question of whether it is [fol. 457] valid at all.

Under the Communications Act, the reasonableness of the tariff regulation, and whether it is discriminatory, and

all that sort of thing, is for the Federal Communications Commission, and if any question of that sort is to be raised by the hotels, they would first have to exhaust their administrative remedy before the Commission. As I read the answer of the hotels, they agree with that. They say that the tariff provisions of the defendant telephone companies are unjust and unreasonable regulations, and provide for unjust and unreasonable practices—this is Section 21 of their answer—and they go on to say that a complaint raising these issues and alleging that the tariff provisions contained in the tariffs are and will be unjust and unreasonable, and unreasonably discriminatory, that such a complaint has been filed and is now pending before the Federal Communications Commission, and that therefore this Court is without jurisdiction in the premises—which I take to mean, and I agree with it, that that issue is not before the Court, but is for determination by the Commission.

Now it is, then, we think, a valid tariff provision, and we ask why the Federal Communications Commission asks for an injunction against us in that connection.

Well, it has been suggested that it is because it is being violated by our agents, the hotels; that the hotels are our [fol. 458] agents, and that in making these charges they do something that is imputed to us as their principals.

Actually, we have a good deal of difficulty as to whether the plaintiff does intend to say that the hotels are our agents in this matter or not. It made a sort of ambiguous finding about the matter in the investigation case, and gave us the option to file a tariff provision, which we did, which contains no element of agency. And then in the proceedings in this case, it has, it seems to me, talked both ways. For example, Mr. Plotkin, on a motion for preliminary injunction or restraining order—I am reading from page 111 of the transcript of the argument before Judge Goldsborough—said:

"Mr. Plotkin: * * * Now there has been a lot of talk back and forth here that the Commission found that the hotels were the agents of the telephone company. The Commission didn't find that they were agents. The Commission found either that in rendering this service they are agents of the telephone company, or that they are subscribers of the telephone company, and if they are sub-

scribers they accept service subject to the conditions specified in the regulations. It was an alternative finding.'"

And I understood Mr. Plotkin to say pretty much the same thing here in the trial before Your Honor. He says now, as I understood him, that in order to get an injunc-
[fol. 459] tion against us, the Commission does say that the hotels are our agents. Now that would mean agents in collecting these particular charges which we have forbidden them to collect by the tariff provisions, and which, as the evidence shows here, of course, we never authorized or approved or in any way had anything to do with.

Now beyond that, the evidence showed—and Mr. McCoy testified—that far from authorizing these alleged agents to make these charges, we wrote them letters and made visits to them and offered them a commission upon condition that they would not make these surcharges, so that we have done everything along that line to prevent that result from following, instead of having authorized or approved it.

But the evidence went beyond that, into the general question of whether there was any agency in this relationship; and I think it should be clear, as Mr. McGarraghy has pointed out, that there is no agency.

It was shown that the hotel applies for service as a subscriber, like any other subscriber; that it specifies what facilities and services it wants for its own purposes, like other subscribers; and that the facilities installed are the same, and in general the operations are the same, as those in the case of any other user of service of the same type.

It was shown, I think, that what the hotel does for its
[fol. 460] guests, the various hotel services, are things that are not within the scope of the activities of the telephone company at all, and that it does them because it thinks it is to its advantage to do that in furnishing the telephone service.

For example, it receives and transmits messages for the guests, and under our tariffs—and they were read here, that is Plaintiff's Exhibit 5—the telephone company doesn't undertake to transmit messages for guests, or fo nybody else.

It was shown that the hotel, like all other subscribers, agrees to pay all the charges—that was in the applica-

tion for the service that nearly all the hotels signed, and it is also in the tariff, in Plaintiff's Exhibit 5; and that the charges are billed to and paid by the hotel, with the rare exceptional case where the hotel may ask for and secure the remission of a charge if the guest has left without paying his bill; that all these hotel services and surcharges are under the control of the hotel, not of the telephone company; that no tariff designates the hotel as agent of the telephone company, there is no contract and there is nothing here upon which an agency could be claimed, in connection either with the operations which the hotel performs or certainly in connection with the charges with which we are concerned.

[fol. 461] I want to say at that point that although cases can be cited from other jurisdictions on this matter, you have to look at the particular facts here, because the relation between the hotel and the telephone company is not a standard and uniform thing throughout the country. It grew up differently in different places, and the relations are different, the tariffs are different, and the contracts are different; and no one case in another jurisdiction is necessarily an authority upon a different state of facts here.

Now the other theory, as I understand it, upon which it is contended that an injunction might be awarded against the telephone company, is that the telephone company is violating its tariff by continuing to render service to the hotel if the hotel collects the surcharge in violation of the tariff provision; that the telephone company is violating its tariff. How? By continuing to render service. Assuming, therefore, that there is an obligation on the telephone company to discontinue the service if the hotel continues to collect the surcharge, and, by inference, that the thing to be done is to cut off the service.

Well, the telephone company has the right to cut off the service. But here is the tariff provision involved—it is from our Exhibit No. 4, it appears both in the PUC and the FCC tariffs in the same language:

"In the event of the abandonment of the service, the [fol. 462] non-payment of any sum due, the use of foul or profane language, the impersonation with fraudulent intent of any person, listening in on party line conversation, or any other violation of the lawful regulations of

the Telephone Company, the Telephone Company may, without notice, either deny service or terminate service."

It *may* deny or terminate the service. It has not provided that it necessarily and automatically will.

And so, if the theory of the plaintiff is that the telephone company is violating its tariff by continuing to render service, in the first place we say that that isn't a violation of the tariff, and it isn't a violation of the Act, because the tariff doesn't say that; but, in the second place, we say that if it were so, obviously the remedy that the Commission should ask would be that we terminate the service to these hotels.

Now the Commission has put into its complaint a prayer that we be enjoined from continuing to furnish this service. It has evolved the theory of this case, if I understand it, that implies that the remedy should be that we cut off the service. As I pointed out to Your Honor, the New York case, and you will find it elsewhere, the remetering case, involved the issue of the right to cut off the service. But counsel for the plaintiff has been saying right along, as we understand it, that they are not asking [fol. 463] that that be done, although it is in their prayer and although it seems to be involved in their theory of the case.

I understood Mr. Plotkin a moment ago to imply, however, that by some kind of an injunction directed against us, that result should be accomplished.

We should like to know definitely whether the Commission is or isn't asking this Court to order us to discontinue service to these hotels in Washington at this time. That, we think, is an important matter, and we would like to know just where we stand.

[fol. 464] The Court: Suppose the hotels were held to be making the surcharge in the nature of increasing the cost of the telephone toll service, if this Court should say to them, "You are enjoined from doing that any further," and the telephone company should know of that injunction, and knew that thereafter they were putting on that surcharge and thereby increasing the cost of the toll messages, and the telephone company continued to furnish them with service, couldn't the Court, under those circumstances, say that you should stop aiding and abetting those hotels in violating the tariff schedules?

Mr. Price: I don't think, your Honor, that we would be aiding or abetting at all. It seems to me——

The Court (interposing): I mean if you have actual knowledge of it. Say you had been here in court and this Court should act, then you would know that the hotels were continuing to violate an order of this Court, and that the way to stop that violation would be either to hold them in contempt or else to enjoin you from serving them with long distance telephone service, when that was in violation of what the Court had finally decided.

Mr. Price: I am a little in the dark as to whether your Honor is speaking of an injunction running against us or against the hotels.

The Court: I am saying that if an injunction ran against [fol. 465] the hotels now, and they continued to violate these tariffs, and you, knowing that they had been violating these schedules, and having been in here in court and a party to this suit, knew that they were continuing to do so after this Court had enjoined them—wouldn't you be aiding and abetting them in violating an order of this Court if you continued to furnish them with telephone service?

Mr. Price: I can assure your Honor that we wouldn't want to aid and abet any violation of a decision of this Court, and we don't want to aid and abet in any violation of our tariff at this time. We would like to see this whole matter straightened out.

The Court: I am just suggesting that if the Court should enjoin the hotels——

Mr. Price (interposing): The Court can be assured of our cooperation.

The Court: And if the Court did not enjoin the telephone companies now the Court could still retain its right to enjoin them later if the facts showed as I have just indicated.

Mr. Price: I can only say that I assume that the normal way to proceed to enforce that injunction would be by contempt proceedings against the hotels. But I do want to say that these telephone companies wish to cooperate and will cooperate in any measure that they can to make this Court's injunction effective, if one is issued.

[fol. 466] The Court: I understand that the plaintiff in this case doesn't contend that the telephone companies have violated the tariff schedule?

Mr. Plotkin: In a technical sense, yes.

The Court: What kind of a technical sense?

Mr. Plotkin: In the sense that their tariffs say, "We will furnish service on condition" and so forth, and they are aware that the condition is not being conformed with and they are still rendering service.

I feel that the answer to the question you asked Mr. Price would be this, your Honor, purely as an abstract and academic question. An injunction against the hotels, which retained jurisdiction against the telephone companies in case it became necessary to issue an injunction against them to enforce your order, would be all right so far as we are concerned.

The Court: But you don't contend that the telephone companies are shown in this proceeding here in this Court to have violated the tariff schedules governing toll messages?

Mr. Plotkin: We think that when the telephone company says, "We are furnishing service to you on condition that you don't"—let's use a remetering case——

The Court (interposing): I don't think this is like a remetering case. The hotels don't get something from the telephone company and then remeter it or sell it at a [fol. 467] retail price to the other party. The hotel companies just put an extra charge on the toll message, but they say it is a hotel charge.

Mr. Plotkin: And we say it is in connection with telephone service.

Mr. Gordon: If the Court please, of course if Mr. Plotkin's present position is that he is not asking at this time for an injunction against either telephone company there is nothing for me to say. If he is still asking for that, I just want to say a few words.

The Court: He is reserving that right, is that so?

Mr. Plotkin: Yes. If you want my statement on the record I would be glad to make it?

Mr. Gordon: No, I just wanted to know whether to say anything or not.

The Court: He has indicated that he doesn't want an injunction now.

Mr. Plotkin: We indicated that if an injunction were to issue against the hotels, reserving the jurisdiction of the Court to issue one against the telephone companies, that that would not be objectionable to us.

Mr. Gordon: All we are here for is to try to keep an injunction from issuing against the telephone companies.

The Court: You don't care what happens to anybody else. (Laughter.) I understand your position.

[fols. 468-476] Well, the Court will announce its decision —since all parties concerned have concluded their arguments—orally from the bench. (Oral opinion of the Court omitted. Printed side page 96-A ante.)

[fol. 477] Mr. McGarraghy: I assume that your Honor will not be called upon to rule on this until the decree is presented, but of course the matter is of great importance to the hotels and I am sure your Honor realizes that, it is a practice that has been in effect ever since we have had hotels, and I wonder if your Honor would stay the decree pending an application to the Court of Appeals?

The Court: No, I won't pass on that until I come to sign the judgment.

Mr. McGarraghy: I will bring it up again at that time.

The Court: Yes. Counsel can confer about that. I can see that you might wish to have it stayed, but am I to allow the hotels to continue putting on these surcharges until the fall of the year, say?

Mr. McGarraghy. At the same time we will be confronted with a loss of revenue.

The Court: Yes, there are two sides.

Mr. Plotkin. Except that during the period they would be stayed they would be getting this 15 per cent from the telephone companies.

The Court: The Court isn't taking that into consideration; that is up to them if they want to take it.

(Whereupon, at 12:45 o'clock, p.m., the trial was concluded).

[fol. 478] PL. EX. 1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 23189

UNITED STATES OF AMERICA, Plaintiff,

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, a corporation, et al.

Affidavit of T. J. Slowie, Secretary of Federal Communications Commission

DISTRICT OF COLUMBIA, ss:

T. J. Slowie, being first duly sworn, on oath, deposes and says that he is Secretary of the Federal Communications Commission, New Post Office Building, Washington, D. C.; and that defendant The Chesapeake and Potomac Telephone Company, on January 30, 1943, filed with the Commission, effective February 1, 1943, Second Revised Page 6 to its tariff F.C.C. No. 3, attached hereto as Exhibit No. 1; and that on January 27, 1943 defendant American Telephone and Telegraph Company filed with the Commission, effective February 1, 1943, Second Revised Page 8 to its tariff F. C. C. No. 132, attached hereto as Exhibit No. 2; each of which tariff pages contains the following provision applicable to all the interstate and foreign message toll telephone service of these defendants:

> "The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones."

The records of the Federal Communications Commission show this tariff provision as in effect from February 1, 1943, to date.

Defendant American Telephone and Telegraph Company has on file with the Commission a formal and effective concurrence in defendant The Chesapeake and Potomac Telephone Company's tariff F.C.C. No. 3, and defendant The Chesapeake and Potomac Telephone Company has on

file with the Commission a formal and effective concurrence in defendant American Telephone and Telegraph Company's tariff F.C.C. No. 132.

T. J. Slowie, Secretary, Federal Communications Commission.

Subscribed and sworn to before me this 28th day of February, 1944. Nicholas F. Cureton. Notary Public, Washington, D. C. My Commission expires July 1, 1946.

[fol. 479] The Chesapeake and Potomac Telephone Company

Tariff F.C.C. No. 3. Second Revised Page 6. Cancels First Revised Page 6

Message Toll Telephone Service

B. General Regulations

1. *Definition*

Message toll telephone service is that of furnishing facilities for telephone communication between telephones in different local service areas in accordance with the regulations and system of charges specified in this tariff. The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones.

2. Undertaking of Telephone Company

a. The Telephone Company's obligation to furnish service is dependent upon its ability to secure and retain without unreasonable expense suitable facilities and rights for the construction and maintenance of the necessary pole lines, channels and equipment.

b. This tariff contemplates the securing of facilities of other companies by the Telephone Company whenever necessary, in order that the Telephone Company may furnish a complete service.

c. The Telephone Company will not transmit messages but offers the use of its facilities when available for communications between customers and/or authorized

users and will not be liable for errors in transmission or for failure to establish connections. Employees of the Telephone Company are forbidden to accept either oral or written communications to be transmitted over the lines of the Telephone Company or the lines of other carriers.

Issued: January 30, 1943. Effective: March 1, 1943

(1) Effective February 1, 1943 on not less than one day's notice under authority of Special Permission No. 1231 of Federal Communications Commission.

By D. E. McCoy, General Commercial Manager, 725 13th Street, N. W., Washington, D. C.

[fol. 480] American Telephone and Telegraph Company
Long Lines Department

Tariff F. C. C. No, 132, 2nd Revised Page 8, Cancels 1st Revised Page 8

Message Toll Telephone Service

B. General Regulations

1. *Definition*

Message toll telephone service is that of furnishing facilities for telephone communication between telephones in different local service areas in accordance with the regulations and system of charges specified in this Tariff. The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones.

2. *Undertaking of Telephone Company*

Transmitting Messages—The Telephone Company does not undertake to transmit messages but furnishes the use of its facilities to its customers for communications.

3. *Priority of Services*

In case a shortage of facilities exists at any time either for temporary or protracted periods, the establishment of message toll telephone service shall take precedence over all others.

4. *Limited Conversation*

The Telephone Company reserves the right to limit the length of conversation when necessary because of a shortage of facilities caused by emergency conditions.

Issued: January 26, 1943. Effective: March 1, 1943

All charges indicated on this page are effective February 1, 1943 on not less than one day's notice under authority of Special Permission No. 1231 of Federal Communications Commission.

By H. H. Carter, General Commercial Manager, 32 Sixth Avenue, New York, N. Y.

[fol. 481] PLAINTIFF'S EXHIBIT No. 2

P. U. C.-D. C.-No. 1

The Chesapeake & Potomac Telephone Co.

Washington Metropolitan Exchange Area

Twenty-Third Revision of Sheet 1

Cancelling Twenty-Second Revision of Sheet 1

A. Regulations.

1. This tariff is subject to the Tariffs, P. U. C.-D. C.-Nos. 2 to 29, inclusive, which Tariffs, together with revised and added sheets or superseding issues thereof, are hereby made a part of this tariff.
2. All rates and charges are in dollars and cents per month, except as otherwise noted.
3. The Washington Metropolitan Exchange Area embraces the District of Columbia and certain adjacent areas in Maryland and Virginia where, due to their proximity to Washington and the continuing expansion of the population of Washington into these areas, there has developed a close community of interest in business and social intercourse. The Washington Metropolitan Exchange Area comprises ZONES designated as follows: Alexandria (Va.), Berwyn (Md.), Bradley (Md.), Capitol Heights (Md.), Chestnut (Va.), Clinton (Md.), Elmwood (Va.), Falls Church (Va.), Hillside (Md.), Hyatts-

ville (Md.), Kensington (Md.), Locust (Md.), Marlboro (Md.), Oxford (Va.), Rockville (Md.), Shepherd (Md.), Silver Spring (Md.), Spruce (Md.), Temple (Va.), Warfield (Md.), Wisconsin (Md.), and Washington, D. C.

* * * * * * * * *

A true copy:

E. J. Willey, Executive Secretary, P. U. C.

Issued April 1, 1944. Effective May 1, 1944.
By D. S. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 482]

P.U.C.—D.C.—No. 1

The Chesapeake & Potomac Telephone Co.

Washington Metropolitan Exchange Area
Twentieth Revision of Sheet 2
Cancelling Nineteenth Revision of Sheet 2

* * * * * * * * *

B. Rates—Washington Zone

In addition to the rates shown below in 1 and 2, the message charges specified in 3, following apply:

1. Flat Rate Service

	Individual Line	Auxiliary Line	2-Party Line	P.B.X. Trunk	P.B.X. or Extension Station
Residence	$4.20	$3.15	$3.50	$4.20	$.50

2. Message Rate Service

	Individual Line	1st P.B.X. Trunk	2-Party Line
Business			
Schedule A	$5.50	$5.50	—
Schedule B	3.50	3.50	—
Schedule C	—	—	$2.70
Schedule D (Semi-Public)	5.50	—	—
Auxiliary Line	2.25	—	—
Additional P.B.X. Trunk	1.75	—	—
Residence			
Schedule E	3.25	3.25	—
Schedule F	—	—	2.25

P.B.X. or Extension Stations
Provided in connection with Schedules A, B, C, E or F, each .... .50

A True Copy:

E. J. Nelligan
Executive Secretary, P. U. C.

***T Indicates transfer to Sixteenth Revision of Sheet 3.
T Indicates transfer from Fifteenth Revision of Sheet 3.
→ Indicates change in text.

Issued April 1, 1944. Effective May 1, 1944.
By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

P.U.C.—D.C.—No. 1

The Chesapeake & Potomac Telephone Co.

Washington Metropolitan Exchange Area
Sxiteenth Revision of Sheet 3
Cancelling Fifteenth Revision of Sheet 3

B. Rates—Washington Zone (Cont'd).

3. Message Charges

The charges specified below apply for messages from telephones bearing the designation of a central office in the Washington Zone to telephones bearing the designation of a central office in the following zones:

➤Alexandria	Berwyn	➤Bradley	➤Capitol Heights	Chestnut	Clinton	Elmwood	Falls Church	Hillside	➤Hyattsville	Kensington	➤Locust	Marlboro	➤Oxford	Rockville	Shepherd	➤Silver Spring	Spruce	Temple	Warfield	Wisconsin	Washington
*	1	*	*	*	2	1	1	*	*	1	*	2	*	2	*	*	*	*	*	*	*

*—Charges for messages, collectively during the month to all zones indicated above by an asterisk, apply in accordance with the following table in connection with message rate service (Schedule A, B, C, D, E and F) as referred to in B. 2. No message charges apply from flat rate telephones to such zones.

Messages during month:	Schedule A	Schedule B	Schedule C	Schedule D	Schedule E	Schedule F
At no additional charge	First 110	First 50	First 40	First 80	First 50	First 45
At 5¢ each	Next 40	Next 100	All Others	All Others	Next 100	None
At 4¢ each	Next 50	Next 50	None	None	Next 50	All Others
At 3¢ each	All Others	All Others	None	None	All Others	None

1—One message unit applies for each 5 minutes or fraction thereof.

2—Two message units apply for first 5 minutes or fraction thereof, and one additional message unit applies for each additional 3 minutes or fractions thereof.

Charge per message unit ..... 5¢

A True Copy:

E. J. Nelligan
Executive Secretary, P. U. C.

***T Indicates transfer to Twentieth Revision of Sheet 2.
➤ Indicates change in text
➤ Indicates change in rate.
T Indicates transfer from Nineteenth Revision of Sheet 2.

Issued April 1, 1944. Effective May 1, 1944.
By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 484] P. U. C.-D. C.-No. 1

The Chesapeake & Potomac Telephone Co.

Washington Metropolitan Exchange Area

Eighteenth Revision of Sheet 4

Cancelling Seventeenth Revision of Sheet 4

B. Rates—Washington Zone (Cont'd).

4. Private Branch Exchange Systems.

a. *Manual Switching Equipment*

	Per Month
(1) *Key Switchboard*	$1.50
(2) *Cord Switchboard*	
(a) Non-multiple, per position: When the total number of trunk, tie and station lines in use is:	
10 or less	$2.00
11 to 30	3.00
31 to 60	4.00
61 to 100	5.00
101 to 150	6.00
151 to 200	7.00
201 to 260	8.00
Over 260	9.00
(b) Multiple, per position	$10.00

Note: Charges on a special assembly of equipment basis may be applied for installations involving special features such as machine ringing, audible ringing, audible flashing recall and idle trunk lamp indicating.

(3) *Key Station System* (See Note)	
12-button key sets, each	$1.00*
24-button key sets, each	1.25*
36-button key sets, each	1.50*
Interior cabling and wiring between stations in excess of $5.50 per station, installation charge	Cost

* Includes one station per key set.

Note: Systems now in service will be charged for in accordance with these rates. As this equipment is no longer available, no new applications will be accepted.

A true copy:

E. J. Willey, Executive Secretary, P. U. C.

**Indicates change in text.

Issued April 1, 1944. Effective May 1, 1944.
By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 485] P. U. C.-D. C.-No. 1

The Chesapeake & Potomac Telephone Co.

Washington Metropolitan Exchange Area

Tenth Revision of Sheet 5

Cancelling Ninth Revision of Sheet 5

	Per Month
b. *Dial Switching Equipment*	
(1) *Key Switchboard Dial System*	
(a) Attendant's cabinet:	
4 trunk lines capacity, including lockout feature	$10.00
10 trunk and tie lines capacity (no lockout feature)	7.50
(b) Power equipment and other common equipment	20.00
(c) Selector-connectors, each	2.00
(d) Dial tie line terminals, arranged to be selected only, each	2.00
(2) *Cord Switchboard Dial System*	
(a) Manual Switchboard: Non-multiple, per position	Same as for Manual Systems

Multiple, per position	$10.00

Note: Charges on a special assembly of equipment basis may be applied for installations involving special features such as machine ringing, audible ringing, audible flashing recall and idle trunk lamp indicating.

(b) Power Equipment and Other Common Equipment:

For each station, selector, connector, and selector-connector:

First 1000, each	.10
Next 2000, each	.07-½
All over 3000, each	.05
Minimum charge	$25.00

A true copy:

E. J. Milligan, Executive Secretary, P. U. C. (Seal.)

Issued June 21, 1943. Effective July 1, 1943.
By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

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‡ Indicates change in rate.
> Indicates change in text.

[fol. 486] P. U. C.-D. C.-No. 1

The Chesapeake & Potomac Telephone Co.

Washington Metropolitan Exchange Area

Seventh Revision of Sheet 6

Cancelling Sixth Revision of Sheet 6

	Per Month
(c) Selectors, Connectors, and Selector-connectors:	
Selectors, each	$1.50
Connectors, each	2.00
Selector-connectors, each	2.00

Where applied to a system equipped with line switches, the total charge for all these items in that system shall not exceed the total charge which would be made for all such items that would be required to give that system the same capacity if it were equipped with line finders instead of line switches.

(d) Dial Tie Line Terminals:

Arranged either to select or to be selected, each	$2.00
Arranged both to select and to be selected, each	3.00
Arranged for manual operation in one direction and dial operation in the opposite direction, each	3.00

(e) Cabling—Where the manual and dial portion of the system are not in close proximity, additional charges based on cost apply.

(3) *Key Station Dial System*

(a) Switching Equipment:

Station Lines, Trunks and Intercommunicating Paths in Use

Station Lines	*Trunks*	*Intercommunicating Paths*	
8 or less	2 or less	2	$15.00
15 or less	3 or less	2 or 3	20.00
20 or less	4 or less	2 or 3	25.00

A true copy:

E. J. Milligan, Executive Secretary, Public Utilities Commission.

Issued August 19, 1938. Effective September 1, 1938.

By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

	Per Month
(b) Trunk Lamp Indicators, each	$ .25
(c) Control Cabinet	1.50
(d) Key Stations, including 150 feet of cable in the same building in addition to regular private branch exchange station rate, each	.50
Where a key station cable run in the same building exceeds 150 feet, the customer may be charged for the additional cable required.	
(e) Keyless Stations, each	Regular Private Branch Exchange Station Rate.

c. *Trunks*

The rates for trunks are shown in B.1. and B.2.

d. *Stations*

The rates for stations are shown in B.1. and B.2. These rates include the circuit to connect the station with the switching equipment when both are located in the same building. In all other cases, mileage charges as specified in P. U. C.-D. C.- No. 11 apply, except that special charges based on the individual requirements apply in connection with key stations associated with key station dial systems. The rates quoted in P. U. C.-D. C.-No. 11 contemplate facilities suitable for only two-point connections between an off-premises station and other stations directly connected to and on the same premises with the private branch exchange to which the off-premises station is connected.

Note: For service furnished the United States Government and the Municipality of the District of Columbia, see also P. U. C.-D. C.-No. 28.

A true copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued April 1, 1944. Effective May 1, 1944.

By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 488] PLAINTIFFS' EXHIBIT No. 3

P. U. C.—D. C.—No. 6

The Chesapeake & Potomac Telephone Co.

First Revision of Sheet No. 1

Cancelling Original Sheet No. 1

Business and Residence Service—Application of

A. Business rates apply as follows:

1. In offices, stores, factories and all other places of a strictly business nature.

2. In boarding houses, offices of hotels, halls of apartment buildings, colleges, clubs, hospitals and other institutions, churches (except studies), or where an extension station is located in a shop, office or any place of a business nature.

3. At any location where the listing of a title indicating a trade or profession is provided, except as specified under "B-3."

4. In a building used for both business and residence purposes, if the telephone is located on the same floor immediately adjacent to and connecting with the place where the business is conducted.

B. Residence rates apply as follows:

1. In private residences where business listings are not provided.

2. In private apartments of hotels where business listings are not provided and where service is confined to domestic use.

3. For service furnished a physician, nurse, dentist or veterinary surgeon, at his residence. In such cases the listing may indicate the subscriber's profession, but only in connection with an individual name. (In the case of Osteopath "D. O."; a Christian Scientist practitioner "C. S.," etc.) The word "office" as a sub-listing is not permitted in connection with residence service.

4. In the studies of clergymen located in churches.

5. In a private stable or garage when strictly a part of a domestic establishment.

C. Where the service furnished is on an unlimited or flat rate basis, the use of the service, except in cases of emergency, is restricted to the subscriber, members of the subscriber's household or guests.

A True Copy:
E. J. Milligan, Executive Secretary, Public Utilities Commission.

Issued December 14, 1915. Effective February 1, 1916. By R. V. Marye, General Attorney, 15 Dey Street, New York, N. Y.

[fol. 489] PLAINTIFF'S EX. NO. 4

P. U. C.-D. C.-No. 13

The Chesapeake & Potomac Telephone Co.

Seventh Revision of Sheet 1 Cancelling Sixth Revision of Sheet 1

Private Branch Exchange Service

A. General.

1. The rates quoted herein and in P. U. C.-D. C.-No. 1, contemplate the use of standard equipment. When equipment or service of a special type, i. e., other than standard, is desired, the charges will be based upon individual requirements.

2. Manual or dial private branch exchange systems are classified as follows:

Key Switchboard Systems
Cord Switchboard Systems
Key Station Systems

3. All operating at the subscriber's premises must be performed at the expense of the subscriber and must

conform with the rules and regulations which the Telephone Company may adopt to maintain a proper standard of service.

4. When adjoining apartment houses, not necessarily connected by means of passageways, are under one ownership and operated as a single property, a private branch exchange switchboard will be installed in one of the houses to serve stations located in all the houses under the following conditions:

a. On new installations a charge is made to cover the cost of furnishing and installing the additional cable required to serve all stations from a switchboard in one building.

b. Where separate systems are already installed in adjoining houses under a single control, a charge is made to cover the cost of furnishing and installing the additional cable required to consolidate the systems.

A True Copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued October 20, 1937. Effective November 1, 1937. By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 490] P. U. C.-D. C.-No. 13

The Chesapeake & Potomac Telephone Co.

Seventh Revision of Sheet 2

Cancelling Sixth Revision of Sheet 2

5. Flat rate and message rate private branch exchange trunks may both be connected to the same private branch exchange system only when the flat rate trunks provide service from one local service area and the message rate trunks provide service from another local service area, except that, within a metropolitan exchange area, both classes of trunks may be connected to the same private branch exchange system if the flat rate trunks provide service from one zone and the message rate trunks provide service from another zone.

6. Hotels, apartment houses, clubs, and similar institutions shall not charge any guest, tenant or member for telephone messages from stations accessible to the general public or to guests, tenants or members generally, an amount in excess of that charged for such service at the public telephone stations in the same exchange. A subscriber catering principally to transients and licensed to operate as a hotel shall collect for, and remit to the Telephone Company, its charges incurred by such transients for local and toll messages.

7. For initial contract periods and termination charges, see P. U. C.-D. C.-No. 25.

B. Power Supply.

1. For manual systems and for key station dial systems the Telephone Company ordinarily provides power equipment and power supply without additional charge.

2. In connection with dial systems, except key station dial systems, the current necessary to operate the power plant is provided at the subscriber's expense.

C. Ringing Current.

1. Ringing current is ordinarily supplied by the Telephone Company without additional charge.

D. Operators' Sets and Position Dials.

1. One operator's telephone set and, if required, one position dial are furnished without additional charge for each switchboard position.

A True Copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued May 29, 1941. Effective June 10, 1941.

By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 491] P. U. C.-D. C.-No. 13

The Chesapeake & Potomac Telephone Co.

Second Revision of Sheet 3

Cancelling First Revision of Sheet 3

E. Rates.

1. The rates quoted herein and in P. U. C.-D. C.-No. 1, are applicable for business and residence subscribers' service.

F. Subswitchboard Systems.

1. A subswitchboard system is a subsidiary dial or manual private branch exchange system having no direct connection with a central office for incoming service. Such systems, including switching equipment and stations, are provided at the same monthly rates and subject to the same regulations as specified herein for main private branch exchange systems.

. . . . . .

G. Arrangements for Night, Sunday and Holiday Service.

1. Service to private branch exchange systems outside the usual business hours, i. e., at night, and on Sundays and holidays, when an attendant is not regularly on duty at the main private branch exchange switchboard, may be arranged for under one of the following plans.

2. Under none of these plans are any special supervisory arrangements in effect at the central office, other than those observed as a matter of routine.

A True Copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued June 21, 1943. Effective July 1, 1943.

By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 492] P.U.C.-D.C.-No. 13

The Chesapeake & Potomac Telephone Co.

Original Sheet 4

Plan 1—Income Calls Handled on Same Basis as During the Day.

(a) Under this plan the subscriber connects with the trunk line—the telephone number of which is associated with the main listing in the telephone directory—the telephone station best located so as to be available for any general information. Additional trunks and stations may be similarly connected.

(b) If only one station line is to be connected with a given trunk, no additional charge is made. In case one trunk line is to be connected with two station lines, a charge of $.10 per month will be made for the special equipment required. In no case are more than two station lines connected for this purpose with any one trunk line. Neither code nor selective station ringing will be provided.

(c) Under this plan, incoming calls during the period when the attendant is not on duty will be handled at the central office in the usual manner, that is, connection will be established with any trunk line, the number of which is passed by the calling party or, if that number is busy, with the first non-busy trunk line in the same series.

Plan 2—Special Telephone Numbers.

(a) Under this plan, the subscriber connects a particular station either to a non-sequence trunk not otherwise listed in the directory, or to a regular trunk with which a special telephone number is associated at the central office. The telephone number of the non-sequence trunk, or the special telephone number, is listed in the directory in the following general form:

Penn. Mfg. Co., hdw 202 Main . . . National 2163
Nights, Sundays and Holidays call

Office 202 Main	National 1245
Warehouse 221 South	National 1638

A true copy:

E. J. Milligan, Executive Secretary, P.U.C.

Issued October 20, 1937. Effective November 1, 1937.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 493]

	Per Month
Original Sheet 5	

(b) The following charges apply under this plan:

Listings	
Note specifying hours of service, "Night calls" or "Nights, Sundays and Holidays call"	$.25
Listings inserted under note, in excess of listings to which the subscriber may be otherwise entitled, each	.25
Special Central Office Equipment Arrangements	
Where a non-sequence trunk is used	No Charge
In all other cases, for each special telephone number	$.50

(c) In order that persons who have not observed the special listings for this service in the telephone directory and who use the regular telephone number assignment in making calls at night and on Sundays and holidays may receive a response from the called person, the private branch exchange subscriber is expected to connect to the trunk line, the telephone number of which is associated with the main listing in the telephone directory, the telephone station best located so as to be available for general information.

(d) The central office operators do not in any way supervise calls for private branch exchange systems in order that they may be properly distributed to the various telephone stations connected at the switchboard with the trunk lines. It is intended that listings adequate to enable telephone users to make

calls properly shall be arranged for in the telephone directory.

Plan 3—Special Night Service Switchboard.

(a) Under this plan, arrangements will be made by means of switching equipment whereby any or all of the trunk lines and stations may be disconnected from the main switchboard and connected to a night service switchboard located on the same premises.

A true copy:

E. J. Milligan, Executive Secretary, P.U.C.

Issued October 20, 1937. Effective November 1, 1937.

By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

Original Sheet 6

[fol. 494] (b) The charge for a night service switchboard is the same as the established rate for a similar size main private branch exchange switchboard. For the necessary switching equipment a charge is made based on cost. Established tie line mileage charges apply to all circuits required connecting the two switchboards.

Plan 4—Calls to be Received at Another Listed Telephone. This service is furnished under the same regulations as specified for individual and party lines, see P. U. C.-D. C.-No. 10.

A true copy:

E. J. Milligan, Executive Secretary, P.U.C.

Issued October 20, 1937. Effective November 1, 1937.

By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 495] PLAINTIFF'S EXHIBIT No. 5

P. U. C.-D. C.-No. 3

The Chesapeake & Potomac Telephone Co.

Fourth Revision of Sheet 1. Cancelling Third Revision of Sheet 1

Applications for Service

General Rules and Regulations under which service is furnished:

The rates and regulations are provided for under tariffs P. U. C.-D. C.-Nos. 1 to 28 inclusive.

The general regulations are as follows:

1. Charges are payable:

a. For service connection and installation charges, in advance.

b. For telephone facilities and local service, monthly in advance (except for semi-public service).

c. For local messages sent in any period in excess of the minimum monthly number, and for toll messages, upon request.

d. For local messages from semi-public telephones, such sums as may be necessary to make up any deficiency between the receipts from local messages and the monthly rate, upon request.

2. For any telephone equipment or service discontinued within one month from its establishment, the subscriber is charged for one month, except that where manual multiple private branch exchange switchboards or dial private branch exchange switching equipment other than key station dial switching equipment is discontinued, a termination charge is applicable under P. U. C.-D. C.-No. 25, "Termination of Contracts."

3. The Company's obligation to furnish service is dependent upon its ability to secure and retain, without unreasonable expense, suitable facilities and rights for the construction and maintenance of the neces-

sary circuits and equipment. During the present emergency, where facilities are not immediately available, and there is more than one applicant awaiting service, such applicants, as facilities become available, will be given service in the following order:

a. Applicants for change of address for business service within the same exchange.

b. Applicants for change of address for residence service within the same exchange.

c. Applicants for new business service and additions to existing business service.

d. Applicants for new residence service.

4. If objection in writing be not received by the Company within thirty days after a statement of account is rendered, such statement shall be deemed to be correct and binding upon the subscriber.

5. In view of the possibility of errors and difficulties occurring in the transmission of messages by telephone, and the impossibility of fixing the cause thereof, the subscriber assumes all risks connected with the service except as follows: if service is interrupted otherwise than by the negligence or wilful act of the subscriber, an allowance at the minimum rate for the telephone facilities and class of service in effect at the time of the interruption shall be made for the time such interruption continues after notice and demand to the Company. No other liability shall in any case attach to the Company.

6. In the event of the abandonment of the station, the non-payment of any sum due or any other violation by the subscriber of the terms and conditions under which service is furnished, the Company may, without notice, suspend the service until all charges to the time of the restoration of the service have been paid and all violations have ceased, or terminate the service without suspension of service or following suspension, and sever the connection and remove any of its equipment from the subscriber's premises. Upon any such termination, the subscriber agrees to pay to the Company for any equipment or service furnished for a period of less than one month following its establish-

ment the monthly schedule rate for such equipment or service, and in all other cases the schedule rate for the equipment and service furnished up to the time of such termination.

A True Copy:

E. J. Milligan, Executive Secretary, P.U.C.

> Indicates change in text.

Issued July 20, 1943. Effective August 1, 1943.

By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 496] P. U. C.-D. C.-No. 3

The Chesapeake & Potomac Telephone Co.

Fifth Revision of Sheet 2

Cancelling Fourth Revsiion of Sheet 2

7. The connection of switchboards or circuits, or the attachment of any apparatus or device, not furnished by the Company, to the facilities or equipment furnished by the Company, when such connection or attachment is not authorized by the Company, is not permitted.

8. For the purpose of making collections or of inspecting, repairing or removing any part of its equipment on the premises of the subscriber, the Company and its employees may have access thereto at any reasonable hour.

9. The subscriber assumes responsibility for all charges for local messages and toll messages sent from the subscriber's station and for toll messages received at such station on which the charges are reversed with the consent of the person called.

10. Where the local service furnished is not measured, the use of the service shall be restricted to the subscriber and the agents and representatives of the subscriber.

* * * * * * *

11. When the installation of a private branch exchange system is exceptionally expensive due to unusual conditions, such as reinforced concrete buildings, etc., or when the system is not likely to be reasonably permanent, an installation charge is made.

12. The Company reserves the right to change the telephone number or numbers of the subscriber's telephone station or stations, or the central office district designation associated with such telephone number or numbers, or both, as the exigencies of the business may require.

A True Copy:

E. J. Milligan, Executive Secretary, Public Utilities Commission.

*** Indicates omission.
> Indicates change in text.
T Indicates transfer from P. U. C.-D. C.-No. 13, Fifth Revision of Sheet 2.

Issued October 20, 1937. Effective November 1, 1937.

By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 497] P. U. C.-D. C.-No. 3

The Chesapeake & Potomac Telephone Co.

Second Revision of Sheet 3

Canceling First Revision of Sheet 3

13. Service arrangements may be terminated by ten days' notice in writing by the subscriber to the Company or vice versa.

14. The Company will not transmit messages, but offers the use of its facilities, when available, for communications between parties, and will not be liable for errors in transmission or failure to establish connections. Employees of the Company are forbidden to accept either oral or written messages to be transmitted over the lines of the Company.

15. All ordinary expense of maintenance and repair, unless otherwise specified in the Company's tariffs, is borne by the Company. The subscriber shall take good care of the instruments and all accessories connected therewith. In case of damage to or destruction of any of the said instruments or accessories, not due to ordinary wear and tear, unavoidable accident, fire, or acts of Providence, the subscriber is held responsible for the cost of the equipment destroyed or restoring the equipment to its original condition. Subscribers may not rearrange, disconnect or remove or permit others to rearrange, disconnect or remove any apparatus or wiring installed by the Company, except upon the written consent of the Company.

16. Telephone Directories are the property of the Company, are loaned to subscribers only as an aid to the use of the telephone service and are to be returned to the Company when new directories are issued. Subscribers shall not deface or mutilate directories or attach or permit attachment of covers of any sort or description without the consent of the Company. The Company reserves the right to make a charge for directories issued in replacement of directories defaced or multilated while in possession of subscribers.

A True Copy:

E. J. Milligan, Executive Secretary, Public Utilities Commission.

> Indicates change in text.

Issued March 22, 1937. Effective April 1, 1937.

By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 498] PLAINTIFF'S EXHIBIT #6

P. U. C.-D. C.-No. 19-A

The Chesapeake & Potomac Telephone Co.

Sixth Revision of Sheet No. 1. Cancelling Fifth Revision of Sheet No. 1

Service Connection Charges

A. General.

1. The term "Service Connection Charge" is used to define the charge applying to the establishment of service for a subscriber and the subsequent discontinuance of such service.

2. No distinction is made between a "New Installation" and an "Outside Move," all changes in location of subscribers' equipment from one premises to another being treated as new service connections with Service Connection Charges applying.

3. Service Connection Charges are in addition to schedule rates and any other charges normally applying under the tariffs. They do not apply in lieu of mileage charges, installation charges, or construction charges made because of unusual cost in establishing service, but * * * apply in addition to such charges.

4. A unit of service or facilities means one station, one auxiliary line, one extension line, one private branch exchange or order turret trunk, one toll terminal, or one terminal loop and station in connection with Special Contract Service.

5. Instrumentalities are considered in place only when no change is made necessary at the subscriber's request in (1) the type or location of the instrument or (2) the wiring or equipment on the subscriber's premises.

6. Service Connection Charges are payable at the time application for the particular service or facility is made, * * * except in the case of Federal, State or other Governmental bodies when such payments in advance are prohibited by law. When not

collected in advance, such charges are billed upon completion of the work involved.

* * * * * * *

Issued May 4, 1933. Effective June 1, 1933.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

A true copy:
E. J. Milligan, Executive Secretary, P. U. C.

[fol. 499] P. U. C.-D. C.-No. 19-A

The Chesapeake & Potomac Telephone Co.

Sixth Revision of Sheet 1-A

Cancelling Fifth Revision of Sheet 1-A

B. Charges.

Service Connection Charges are made as follows:

(a) Applying to new or additional facilities where the instrumentalities are not in place:

Business Main Stations, Auxiliary Lines Private Branch Exchange or Order Turret Trunks, Toll Terminals and Terminal Loops in Connection with Special Contract Service, each	$3.50
Residence Main Stations, Auxiliary Lines and Private Branch Exchange Trunks, each	$2.50
Business Private Branch Exchange Stations and Extension Stations or Lines, each	$1.00
Residence Private Branch Exchange Stations and Extension Stations or Lines each	$1.00

When two or more instrumentalities on one order are installed at the same time, on the same premises, for the same subscriber, the Service Connection Charge applicable to each such instrumentality in excess of one, shall be one-half the charges shown above, provided however that

(1) Where the instrumentalities are the same kind the full rate is charged for the first one, and the half rate for the additional instrumentalities, and

(2) Where the instrumentalities are not of the same kind, the full rate is charged for the main or principal instrumentality, and the half rate for the additional or supplementary instrumentalities.

(b) Applying where instrumentalities are already in place:

(1) When an applicant wishes to subscribe for service and the instrumentalities are in place on the premises, charge for establishing service $1.00

(2) When a subscriber wishes to have reconnected additional facilities which have been disconnected and the instrumentalities are in place on the premises, charge for each unit of facilities reconnected $1.00

A True Copy:
E. J. Milligan, Executive Secretary, P. U. C.

Issued March 15, 1939. Effective April 1, 1939.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 500] P. U. C.-D. C.-No. 19-A

The Chesapeake and Potomac Telephone Company

First Revision of Sheet No. 2

Cancelling Original Sheet No. 2

C. Service Connection Charges Do Not Apply to—

1. Stations or Trunks for which no service charges apply.

2. Public Telephone or Toll Stations installed at the initiative of the Telephone Company to meet the public demand for such service.

3. Private Branch Exchange Switchboards.

4. Changes in Class of Service when new or additional equipment is not required; i. e., no service connection charge is made where a subscriber changes from one class of service to another class of service, except that where a change is made involving additional equipment, as from individual or party line service to private branch exchange service, Service Connection Charges apply for the additional stations and trunk lines required.

5. Service Stations.

6. Directory Listings.

7. Joint User Service.

8. Ringing or Battery Supply Circuits.

9. Miscellaneous (new or additional) Equipment, as outlined in the Supplemental Equipment section of this tariff.

10. Operators' Sets.

11. Order Tables.

12. Telegraph Terminals.

13. Changes of name without change in subscriber's interest, when service and facilities are assumed prior to their discontinuance without lapse in the rendition of or charges for service, in the following cases:

a. When a business concern with unchanged personnel applies for its existing service under a new name; or when one or more members of an existing business concern continue the business of the old concern and contract for the existing service of the old concern under a new name.

b. When a receiver, under a receivership, applies for the service previously contracted for by the party for whom he is a receiver; or when a receivership is discontinued and the service is reestablished for the original party in his own name.

c. When a subscriber's name is changed by marriage or court order and the existing service of the subscriber is contracted for under the new name.

d. When one member of a family applies for the service previously contracted for by another member of the same family residing in the same household.

14. Changes of subscriber's interest without change of name, when service and facilities are assumed prior to their discontinuance without lapse in the rendition of or charges for service, in the following cases:

a. When one party applies for the service that was previously contracted for by a second party for the use of the first party.

b. When one party applies for the service for a second party, which service had previously been contracted for by the second party in his own name.

Issued May 20, 1922. Effective June 1, 1922.
By C. W. Artz, Counsel, 725 13th St., N. W., Washington, D. C.

A True Copy:
E. J. Milligan, Executive Secretary, Public Utilities Commission.

[fol. 501] PLAINTIFF'S EX. No. 7

P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Eighth Revision of Sheet 1

Cancelling Seventh Revision of Sheet 1

Supplemental Equipment

The rates specified hereunder apply to equipment in addition to that regularly furnished in connection with the various types of service.

A. Equipment Installed and Maintained by Telephone Company.

Booths.

Booths furnished by the subscriber must be satisfactory to the Telephone Company. When furnished by the Tele-

phone Company the following rates apply, no allowance being made for a period of less than one year:

Unit type, folding door, small size, per unit,
$1.50 per month

Chest Transmitter Sets

Operating sets, consisting of chest transmitter and head head receiver, are regularly furnished without charge at each position of a switchboard of three or more positions. They are also furnished at a two-position board in place of the usual transmitter arm or bracket and head receiver at the option of the subscriber, without additional charge.

Chest transmitter sets for use at one-position cord boards, in place of the usual transmitter arm or bracket and head receiver, are furnished at the option of the subscriber, without additional charge.

Extra chest transmitter sets, complete, for use of relief operators, are furnished at $.20 each, per month.

When a chest transmitter set is required in place of a subscriber's standard set, at a key switchboard or in connection with an individual central office line, private line or extension line, a charge of $.20 per month is made in addition to the regular station charge. Chest transmitter sets are not furnished in connection with party central office lines.

Coin Collecting Devices

Coin collecting devices for use in connection with message rate private branch exchange stations will be furnished and maintained by the Telephone Company at a rate of $.25 each, per month.

Issued October 20, 1937. Effective November 1, 1937.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

A True Copy:
E. J. Milligan, Executive Secretary, P. U. C.

[fol. 562] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Ninth Revision of Sheet 2

Cancelling Eighth Revision of Sheet 2

Conference Equipment

Conference equipment of the manual type is furnished for use at a cord switchboard in connection with a manual private branch exchange or at a manual position of a dial private branch exchange, and the dial type is furnished for use in connection with the dial switching equipment of a private branch exchange, at the following rates:

	Per Month
Manual type	
4 lines	$2.75
12 lines	5.50
Dial type	
4 lines	$4.00
Each additional line, total lines not to exceed 10	1.00

Cords

Cords will, unless otherwise specifically requested, be furnished as follows:

1. Between a desk set mounting and its associated bell box or connecting block—5½ feet;

2. Between a hand set mounting and its associated bell box or connecting block, and between a hand set proper and its mounting—4 feet.

Upon specific request, extra length cords will be furnished as follows:

1. Between the instrument mounting and its associated bell box or connecting block:

	Installation Charge
9 foot cord	$1.00
13 foot cord	1.25

2. Between a hand set proper and its mounting:

9 foot cord	$1.00

Issued November 29, 1935. Effective December 1, 1935.
By E. G. Bliss, General Commercial Manager, 725 13th Street, N. W., Washington, D. C.

A True Copy:
E. J. Milligan, Executive Secretary, P. U. C.

[fol. 503] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Twelfth Revision of Sheet 3

Cancelling Eleventh Revision of Sheet 3

Twelfth Revision of Sheet 3

Cancelling Eleventh Revision of Sheet 3

Extension Bells

Extension bells furnished on the line and in the same building with a telephone station are furnished at the following rates:

	Per Month
Extension Bell, ordinary type, each	$.15
~~Extension Bell, loud ringing type, each~~	.20

When an extension bell is to be installed outside the building in which the telephone station is located and an outside circuit is required, a charge will be made in addition to the charge for the extension bell or gong for the necessary circuit at the rates established for extension lines. (See P. U. C.-D. C.-No. 11.)

The placing of extension bells is limited as follows:

(a) Individual Lines. Not more than three extension bells or a total of four bells for each subscriber's line.

(b) ~~Two-Party Lines. Not more than three extension bells or a total of four bells for each subscriber.~~

(c) Private Branch Exchange Systems. Not more than one extension bell or a total of two bells shall be connected by night cords on any line used for night

or holiday service, except upon approval of the Chief Engineer.

* * * * * * *

Hand Generators

Hand generators in connection with extension stations are supplied without additional cost.

Hand Telephone Sets—Colored

Hand telephone sets, finished in the colors specified, are furnished at the following non-recurring charges:

Dark Gold, Old Brass, Oxidized Silver, Statuary Bronze, (metallic), each	\$12.00*
Dark Blue, Gray Green, Ivory, Old Rose, Pekin Red, (non-metallic), each	\$7.50*

* Indicates new rate.

These charges are in addition to any service connection, move or change charges applicable.

Issued March 15, 1939. Effective April 1, 1939.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

A True Copy:
E. J. Milligan, Executive Secretary, P. U. C.

[fol. 504] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Sixth Revision of Sheet 4

Cancelling Fifth Revision of Sheet 4

Jack and Plug Equipment

Jack and Plug Equipment is furnished in connection with individual line service (except any form of coin box service), and private branch exchange service.

A portable telephone is furnished without charge for each individual, auxiliary or extension line unless there is a

telephone instrument permanently connected to the line, in which case the established rate for an extension station applies to the portable telephone. Each additional portable telephone is also furnished at the established rate for an extension station.

When main-station service only is provided, jacks are confined to the same building on same premises. Jacks for use in connection with extension lines may be located at any point on the subscriber's premises within hearing distance of a station or extension bell.

In connection with private branch exchange service, the subscriber is required to contract for at least one station, permanently connected or portable, for each station line equipped with a jack or jacks. All jacks must be located on the same premises with the private branch exchange switching equipment but may be located in a different building from the one in which such switching equipment is located, provided that all jacks on any one station line are located in the same building.

One bell permanently connected to the line is required for each line equipped with jacks. When the total number of bells exceeds the number of permanently connected and portable telephones, the additional bells are provided at the established rate for extension bells.

Jacks and associated wiring, installation charge, each, $3.00.

Changes in location or other rearrangements of jacks are charged for at cost, not to exceed $3.00 per jack.

Portable telephones, each, per month . . . Extension Station or Private Branch Exchange Station Rate.

Where no permanently connected station is provided, the customer is charged the individual line or private branch exchange station rate applicable, which includes one portable station for each line without additional charge.

Service connection charges do not apply to portable telephones, except that, in connection with individual line service when no permanently connected station is provided, the service connection charge applicable to an individual line main station shall apply to each central office line.

These rates, charges and regulations do not apply to special installations of jack and plug equipment involving inter-

communicating systems, or at non-stationary locations, such as on ships, trains, etc.

Issued September 5, 1940. Effective September 16, 1940.
By D. E. McCoy, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

A true copy:
E. J. Milligan, Executive Secretary, P. U. C.

[fol. 505] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Original Sheet No. 5

No. 100 Key Equipment—Multiple Line

This equipment is furnished in connection with a group of central office lines, private branch exchange station lines or private lines at the following rates in addition to the established charges for service:

Key Boxes	Per Month
3 line single sided	$1.50*
3 line double sided	1.75*
6 line single sided	2.25*
6 line double sided	2.75*
Line Equipments (relays, etc.) per line	1.25*
Stations, in excess of one per line	Regular extension station or P.B.X. station rate.

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* Indicates new rate.

Operators' Chairs.

Operators' chairs are furnished without charge in connection with private branch exchange switchboards when, because of the height of the keyshelf, a standard height chair will not meet normal requirements.

Issued September 8, 1931. Effective October 1, 1931.
By E. G. Bliss, General Commercial Mgr., 725 13th St., N. W., Washington, D. C.

A true copy:
E. J. Milligan, Executive Secretary, P. U. C.

[fol. 506] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Third Revision of Sheet 6

Cancelling Second Revision of Sheet 6

Receivers

Subscribers' stations and operating sets at cordless switchboards are regularly equipped with hand receivers only. For cord type switchboards, head receivers are the standard operating set equipment.

Single Head Receiver

If conditions warrant, a single head receiver with head band and special hook switch may be furnished in place of the usual hand receiver without additional charge. This equipment is designed for use when it is necessary to have the full use of both hands during telephone conversations. The use of the single head receiver is not recommended, as the receiving qualities with this equipment are inferior to those of the usual hand receiver.

Watch Case Hand Receiver

A watch case hand receiver for use in conjunction with the usual hand receiver, but not separately, with the desk stand equipped with a special hook to hold the receiver when not in use, may be furnished without additional charge. This equipment is designed for use where the surroundings are noisy at times and when it is desired to use both ears during telephone conversation.

Double Head Receiver

A double head receiver with head band and special hook switch for use in place of the usual hand receiver may be furnished without additional charge. This equipment is designed for use when the surroundings are continuously noisy and when it is desired to use both ears during all telephone conversations.

Special Finish

Telephone sets, bell boxes, switchboards and other station apparatus are furinshed in standard types and finish

to meet general requirements. Where equipment or apparatus is finished specially to meet special requirements, the charge for such special finish shall be the cost of the special finish and the cost of restoring the equipment or apparatus to its original finish.

* * * * * * *

A true copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued February 4, 1938. Effective February 15, 1938.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 507] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Second Revision of Sheet 7

Cancelling First Revision of Sheet 7

Station Auxiliary Signals

Special signaling arrangements may be provided in connection with individual line and private branch exchange service.

The subscriber is required to supply commercial power suitable for the operation of the equipment and to furnish and maintain the necessary circuits for power transmission.

Station auxiliary signals and associated equipment are provided at the following rates:

	Continuous or Non-Continuous Operation Per Month	
	Indoor	Outdoor
Signal Control Equipment, each	$1.00	$1.00
Signals Operated by Commercial Power:		
10-inch AC or DC bell, each	.50	.70
Horn, AC or DC, each	.50	.50

Signals Operated by Power from Dry Cells:

3-inch vibrating bell, each	.30 *
6-inch vibrating bell, each	.40 *

* Not furnished for outdoor use.

Subscriber's Set for Outdoor Use

Subscriber's telephone sets enclosed in a metal weatherproof housing are furnished at the following rates:

	Per Month
New cabinet type telephone set, enclosed in an aluminum housing, each	$1.00●
Old cabinet type telephone set, enclosed in an iron housing, each	.75**

** Telephone sets of this type now in service will be charged for at this rate. As these sets are no longer available, no new applications will be accepted.

The rates specified above are in addition to the rates and charges applicable to the class of service in connection with which the set is furnished.

Subswitchboards. (See Private Branch Exchange Systems, P. U. C.-D. C.- No. 13.)

A true copy:

E. J. Milligan, Executive Secretary, P. U. C.

● Indicates new rate.

Issued May 1, 1939. Effective May 15, 1939.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W. Washington, D. C.

[fol. 508]

P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

Second Revision of Sheet 8

Cancelling First Revision of Sheet 8

Supplemental Station Equipment for Subscribers with Impaired Hearing

Station amplifier equipment is furnished for use by subscribers whose hearing is impaired to such an extent that

satisfactory telephone service cannot be obtained with the type of station equipment usually provided. Such equipment is provided exclusively for the use of persons with impaired hearing, but the Telephone Company does not hold itself out as being able to furnish equipment which will be satisfactory in all cases of impaired hearing.

This equipment is furnished at a rate of $1.25* per month

---

* Indicates change in rate.

in addition to the established rates and charges for service. * * *

Switches

A switch to cut out an extension bell or loud ringing gong will be furnished without charge.

Transmitter Cut-Out Switches.

Hand-Operated.

A desk stand telephone equipped with a hand-operated transmitter cut-out switch may be furnished in place of the usual desk stand telephone, without an additional monthly charge.

Foot-Operated.

This type of switch is designed for use where the hand-operated switch will not meet the subscriber's service requirements and is furnished in connection with a telephone instrument or operator's set at $.25 per month in addition to the established charges for service.

Telegraph Instruments. (In connection with Private or Leased Lines.)

Morse instruments, each ..... $1.00 per month

A true copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued November 29, 1935.

Effective for new services December 1, 1935 and for existing services on the several billing dates December 1, 1935 to December 26, 1935.

By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

[fol. 509] P. U. C.-D. C.-No. 22

The Chesapeake & Potomac Telephone Co.

First Revision of Sheet 9

Cancelling Original Sheet 9

Transmitter Arms.

Transmitter arm, Western Electric Company, type 20-CC	$.15 per month
Transmitter arm, Western Electric Company, type 140-PD, adapted for mounting on wall	.10 per month
Transmitter arm, Western Electric Company, type 140-PA, adapted for use on roll top desk	.10 per month
Transmitter arm, Western Electric Company, type 140-PC, for use on flat top desk or table	.10 per month
Flexiphone	.20 per month

Telephone arms of the general type, which are provided with a clamping device to hold the standard desk set, may be purchased by subscribers in the open market and may be used in connection with the standard desk set furnished by the Telephone Company. An example of this general type of telephone arm is Western Electric Company Type "S."

* * * * * * *

Rates for Equipment Not Otherwise Provided For.

When a subscriber desires a type of equipment or service for which provision is not otherwise made, an installation charge, monthly charge or both will be made based on the cost of furnishing such equipment or service.

B. Equipment Installed and Maintained by Railroads Under the Standard Operating Agreement.

Railroad Companies, which have executed the Standard Operating Agreement for Railroads, are allowed to install and maintain telephone equipment to be used in connection with regular exchange service (not including Private Branch

Exchange switchboards or main station) when the equipment is located in places where its installation and maintenance by the employees of the Telephone Company would involve unusual hazard to them—such, for instance, as railroad tunnels, yards and rights of way—and where the equipment is used in the operation of the railroad and for the protection and benefit of the traveling public.

A true copy:

E. J. Milligan, Executive Secretary, P. U. C.

Issued October 20, 1937. Effective November 1, 1937.
By E. G. Bliss, General Commercial Manager, 725 13th St., N. W., Washington, D. C.

INFORMATION FOR DIRECTORY LISTING

Shoreham Hotel Corporation No Des
2500 Calvert St., N. W.

AUTHORITY OF SUBSCRIBER — CLASSIFIED HEADING — AUTHORITY OF SUBSCRIBER

Hotels — Adams 0700

INITIAL EXCHANGE SERVICE, EQUIPMENT AND RATE PER MONTH

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

Plaintiff's Ex 9

AUTHORITY OF SUBSCRIBER — IN — OUT

BILLING INFORMATION

DERV. COMM CHG. $
INSTALLATION CHG. $
ADV. PAY. ON ACCT. $

SUPERSEDES

TEL. NUMBER
NAME
EFFECTIVE ON
WILL / WILL NOT ASSUME OUTSTANDING CHARGES

MISCELLANEOUS INFORMATION

Equipment being billed to Shoreham Hotel Corporation as of 4-21-44.

ADVERTISING { YES / NO

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE — ZONE

The undersigned requests The Chesapeake and Potomac Telephone Company of Baltimore City to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay for the exchange service described above the rates stipulated or such exchange rates as may from time to time be included in Company's filed exchange tariffs. The undersigned also agrees to pay all toll and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME — APPLICANT

APPLICATION TAKEN BY — DATED — 19 — BY — TITLE

Form 3245-MI-1

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. REQ.	REV. REQ.	MISCELLANEOUS INFORMATION
			Switchboard			60 00		6 Position
			1 Trunk			5 50		110 Calls
			38 Trunks			66 50		
			Auxl lines	(2)		4 50		
			Stations	(69?)		348 50		
			Stations	(158)		79 00		
			Listings	(20?)		51 00		
			Nine sets	(2)		2 00		
			203-A	(2)		50		Wiring Plans.
			5 SS			2 45		Buzzer Circuits.
			4 Gongs			80		
			29 Bells			4 35		Extension bells.
			Conference			2 75		4 line conference equipment.
			1 Booth			1 50		
			1 Station			50		Terminate in Wiring Plan 203.
			1 Station			50		Terminate in Wiring Plan 203A

BILLING INFORMATION

SERV. CONN CHG. $

INSTALLATION CHG. $

ADV. PAY. ON ACCT. $

SUPERSEDES

TEL. NUMBER

NAME

EFFECTIVE ON

WILL / WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING { YES / NO

MISCELLANEOUS INFORMATION

Equipment being billed to Shoreham Hotel Corporation as of 4-21-44.

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE ZONE

The undersigned requests The Chesapeake and Potomac Telephone Company of Baltimore City to furnish telephone service and equipment as above specified and as may be ordered from time to time, and agrees to pay for the exchange service described above the rates stipulated or such exchange rates as may from time to time be included in Company's filed exchange tariffs. The undersigned also agrees to pay all toll and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME _____ APPLICANT

APPLICATION TAKEN BY _____ DATED _____ 19____ BY _____ TITLE

Form 3243-MZ-1

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
			Switchboard			60 00		6 Position
			1 Trunk			5 50		110 Calls
			36 Trunks			66 50		
			4wxl lines	(2)		4 50		
			Stations	(697)		348 50		
			Stations	(158)		79 00		
			Listings	(204)		51 00		
			Mine sets	(2)		2 00		
			203-A	(2)		.50		Wiring Plans.
			5 BZ			2 45		Buzzer Circuits.
			4 Conge			80		
			29 Bells			4 35		Extension bells.
			Conference			2 75		4 line conference equipment.
			1 Booth			1 50		
			1 Station			50		Terminate in Wiring Plan 203.
			1 Station			50		Terminate in Wiring Plan 203A
			Lamp indicator			60		Type 21A

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

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The Hilton Hotel Corporation — P. B. X. STATIONS AND EXTENSION LINE MILEAGE — Adams 0700

ISSUED	COMPLETED	ORDER NO.	STATIONS IN	STATIONS OUT	MILEAGE IN	MILEAGE OUT	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION
			8 Operator Sets				1 60		
			11 LD Loops				19 25		
			Wiring Plans				1 75		7 - $203
			600' Mileage				60		Locate in chicken house.

Balance Carried Forward

The Sherman Hotel — P. B. X. STATIONS AND EXTENSION LINE MILEAGE — AD 0700

ISSUED	COMPLETED	ORDER NO.	STATIONS IN	STATIONS OUT	MILEAGE IN	MILEAGE OUT	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION
			5	POS	H-604	PBX SWBD			
			478	MN	STA'S	HS (10 C-I MTGS)			
			191	XMN	"	"			
			3	MN	"	WALL			
			1	MN	"	MINE			
			1	MN	"	DESK			
			4	M	"	ELEVATOR			
			34	TRUNKS					
			6	LD LOOPS					
			4	CONFERENCE CIRCUITS					
			1	TIE LINE TO DEMOCRATIC CLUB					
			1	"	"	750 PR IN ART 800-G			
			5	OPERATOR	CORDS				
			10		"	SETS			
			24	9 FT CORDS					
			14	12	"	"			
			1	8	"	"			
			1	20	"	"			

WEEK'S OF JULY 18 1956

Balance Carried Forward

SHOREHAM HOTEL P. B. X. STATIONS AND EXTENSION LINE MILEAGE

ISSUED	COMPLETED	ORDER NO.	STATIONS IN	STATIONS OUT	MILEAGE IN	MILEAGE OUT	REVENUE INCREASE	REVENUE DECREASE	AD 0700 MISCELLANEOUS INFORMATION
			5	POS	H-604	PBX SWBD			
			478	MN	STAS	HS (10 C-1 MTGS)			
			191	XMN	"	"			
			3	MN	"	WALL			
			1	MN	"	MINE			
			1	MN	"	DESK			
			4	M	"	ELEVATOR			
			34	TRUNKS					
			6	LD LOOPS					
			4	CONFERENCE CIRCUITS					
			1	TIELINE TO DEMOCRATIC CLUB					
			1	"	"	"	750 PBX IN APT 800-G		
			5	OPERATOR CHAIRS					
			10		"	SETS			
			24	GTC LOOPS					
			14	13	"	"			
			1	8	"	"			
			1	20	"	"			
			1	15	"	"			
			1	25	"	"			
			6	4	6	(24)			
			2	JACK-O LNG EQUIP					
			1	WP 200					
			12	"	150				
			3	"	201				
			3	"	203				
			12	PUSH BUTT LN CTS					

PHYSICAL CHECK AS OF JULY 1, 1966

Balance Carried Forward

250

1935 JUL 31 2 PM

L. GARDNER MOORE
MANAGER

The SHOREHAM

Connecticut Avenue at Calvert Street
Washington, D. C.

PRIVATE EXCHANGE
SPECIAL FILE
AUTHORITY FOR LISTINGS AND DISCONNECTION OF SERVICE
TEL. NO. ad 0700

July 31, 1935.

The Chesapeake & Potomac Telephone Company,
725 Thirteenth Street, N. W.,
Washington, D. C.

Gentlemen:

In accordance with a request from Mr. W. Woodward Cook, we would appreciate your changing the listing of his name from W. W. Cook to W. Woodward Cook.

Thanking you for your attention in this matter, we are

Very truly yours,

SHOREHAM HOTEL CORPORATION

J. Kharshing

Treasurer.

gjs/rmk

Thanks

Acknowledged by Tel

Acknowledged to Mr. Thornburg

Date Ack. 8/1 Date Ordered 8/1

Employee Hew

Remarks Thanked, confirmed
ordering recruitment right
down.

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DIRECTORY LISTING: ANNAPOLIS HOTEL NO DES 1111 H NW

CLASSIFIED HEADING: HOTELS

TEL. NO. NAT 9220 To 9228-9229

INITIAL SERVICE EQUIPMENT AND RATE PER MONTH

SWITCHBOARD 2POS MAN 9[illegible]	18 00
TRUNK INCL 50 LOCAL MES	3 60
10 TRUNKS @ 2[illegible] ea	20 00
395 MAN STAS HAND SETS	197 50
1 EXT " " "	65
2 EXT " " "	1 00
1 EXT BELL	15
1 EXT GONG	20
2 LD Loops 2[illegible] ea	4 00
900' " 930 H NW	60
1 OPERATORS SET	20
1 Light relay	1 00
18 ADDL LISTINGS.	4 50
TOTAL	$ 251 40

SER. CONN. CHG. $ 12 50 B

ADV. PAY. ON ACCT. $

BOND $ COMPANY

Loops 1625-MS NAT-9231 Jan 5 1936 REFUNDED 4/24/40

→ NAT 9503 Station 9 NAT 9621

INCL NAT-9513 9621

BILLING NAME WASHINGTON ANNAPOLIS HOTEL COMPANY 9513 9621

ADDRESS 1111-H NW

C Hunt

MISCELLANEOUS INFORMATION

P Standish E 9

SUPERSEDES TEL. NUMBER NA 9220

WASHINGTON ANNAPOLIS HOTEL CO

EFFECTIVE ON DEC. 19-1935

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☑ NO ☐

ST. ADDR. DIR. YES ☑ NO ☐

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company of Maryland telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Washington-Annapolis Hotel Co. (SIGN HERE) E J O'Brien, Pres. APPLICANT

APPLICATION TAKEN BY [illegible] DATED 1-6-1936 TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
JAN 7 36	1/7	R	1 BDX 2 Pos MB	18 00			
			1 TRUNK [illegible]	3 60			
			10 TRUNKS	20 00			
			395 MIN-H	197 50			
			1 X MIN-H	65			
			2 X MIN-H	1 00			
			1 X B	15			
			1 X G	20			
			2 L.D. LOOPS	4 00			
			900' M.	60		Rec 930 H NW	
			1 OPR SET	20			
			1 LIGHT RELAY	1 00			
			18 A.I. STS	4 50			
			2 A.I. STS	00		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	
JAN 7 36	1/7		1 TK		3 60	50 CALLS @	
4/24/36	1/24		1 T.K	5 50		FOR CALLS FOR 11 NET 1/24/36	
	A-28	W 22024				DD 3/28 PMM. BR 700 INT CHECKED	

930 H NW	60	
1 OPERATORS SET	20	
1 Light relay	100	
18 ADDL LISTINGS	450	
TOTAL	$ 2517 0	

MISCELLANEOUS INFORMATION

Pleasants E 9

TEL. NUMBER NA 9220 SUPERSEDES

WASHINGTON ANNAPOLIS HOTEL CO

EFFECTIVE ON DEC. 19 1935

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☑ NO ☐

ST. ADDR. DIR. YES ☑ NO ☐

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON, D.C.

The undersigned requests The Chesapeake and Potomac Telephone Company of Maryland telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Washington-Annapolis Hotel Co. (SIGN HERE) G.J. Rucker, Pres. APPLICANT

APPLICATION TAKEN BY DATED 1-6-1936 TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
JAN 7 36	1/7	R	1 DX-B-MB 2 Pos	18 00			
			1 TRUNK (50)	3 60			
			10 TRUNKS	20 00			
			3 MIN-H	194 50			
			1 X MIN-H	65			
			2 X MIN-H	1 00			
			1 XB	15			
			1 XG	20			
			2 H.D. LOOPS	4 00			
			900' M1	60		Loc 930-H NW	
			1 OPR SET	20			
			1 LIGHT RELAY	1 00			
			18 ALSTS	4 50			
JAN 7 36	1/7		2 ALSTS	00		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	
	1/24		1 TK		3 60	50 CALLS DD	
4/14/36			1 TK	5 50		50 CALLS EFF 1/1 LET 1/13 DD	
	8:25	M22024				3/28 PM MV BR 200 MV CHG ISOB SEE HOUSEKEEPER RM 1910	
APR 17 36	3/18	025816	1 X MIN-H		65	LOCON BR 127 DD 3/18 ALSO MV BR 127 MV CHG 150B SEE MR GARDNER - ENGINEER LET NO FUR USE DD 3/17	
	D		1 XG	20			
APR 18 36	6-8	R	6 ALST		150	DD DIR DEL WS 11-14-15-16-18-24	
	6-8	R	1 ALST	25		* 22 LISTING LET	
APR 18 36	4/16	036541	1 MN-H		65	DD 4/16 NO FUR USE SEE MR GARDNER-ENGINEER FOR ACCESS	

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CARLTON HOTEL
923 16 N.W

MC DES

HILLS

MET 2626
" 2372
" 2569

-10

INITIAL SERVICE, EQUIPMENT AND RATE INFORMATION

THREE POSITION MULTIPLE SWITCH BOARD WALNUT 3000
1 TRUNK LINE 300
18 ADDITIONAL TRUNKS 3600
296 PRIVATE BRANCH EXCHANGE STATIONS 14800
193 EXTENSION STATIONS 7650
11 HAND SETS 275
20 HAND SETS 0.0

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

1 HOTEL CARLTON NODES-LLHD HOTELS

MISCELLANEOUS INFORMATION

DD 11-1-35

ASSOCIATED C & P RECORDS

2640
2641
2642
2643
2675
2797
2845
3092

SERV. CONN. CHG. $ NONE
INSTALLATION CHG. $
ADV. PAY ON ACCT. $

SUPERSEDES
TEL. NUMBER Met 2626
NAME SAME
EFFECTIVE ON
WILL ASSUME OUTSTANDING CHARGES
SIGNING (NO)
FULL NAME

APPLICATION FOR TELEPHONE SERVICE

AT Metropolitan EXCHANGE

ESS

The undersigned requests the Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, either orally or in writing, such service and equipment to be furnished subject to the lawful rates, rules and regulations applying thereto, and agrees to pay therefor at the rates established from time to time and other charges, including for any multiple switchboard position or manual switching installation furnished hereunder, or in connection therewith, and discontinued or moved for whatever cause within five (5) years following its connection, a termination charge based upon the cost of installation and removal and computed as set forth in the Company's lawfully established rates and regulations, provided, however, that said termination charge shall not exceed a sum equal to the schedule rate for one month for such equipment in force at the time discontinuance or removal is requested multiplied by the number of months remaining in the five (5) year period. Application to this application for service constitutes verification of and authority for [illegible]

WASHINGTON

WITNESS
DATED July 29th 1935

J Hodson
BY

APPLICANT
TITLE

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	WORK	REV. DESC.	MISCELLANEOUS INFORMATION
	10/30	C	PBX B-MB					
			3 POS WHL	1		3000		
			TK	1		360		
			TKS	18		3600		
			MN-D	259		14850		
			MN-H	11		725		
			MN-H	17		850		
			XMN-H	3		150		
			XMN-D	190		9500		
			XB	1		15		
			XG	1		20		
			LD LOOPS	6		1200		
			MN-CB-W	9		675		
			OPR SETS	8		60		
			PBX CKT	1		35		
			PBX CKT	1		30		
		6700	ALST	1		00		

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

STATIONS 14800
193 EXTENSION STATIONS 7650
11 HAND SETS 275
20 HAND SETS 00

APPLICATION FOR TELEPHONE SERVICE

AT Metropolitan EXCHANGE

ESS

The undersigned requests the Chesapeake and Potomac Telephone Company to furnish telephone service and equipment as above specified and as may be ordered from time to time, either orally or in writing, such service and equipment to be furnished subject to the lawful rates, rules and regulations applying thereto, and agrees to pay therefor at the lawful established rates and other charges, including for any multiple switchboard position or extension interphone installation furnished hereunder, or in connection herewith, and discontinued or moved for whatever cause within five (5) years following its connection, a termination charge based upon the cost of installation and removal and computed as set forth in the Company's lawfully established rates and regulations, provided, however, that said termination charge shall not exceed a sum equal to the scheduled rate for one month for such equipment in force at the time discontinuance of service is requested multiplied by the number of months remaining in the five (5) year period. Applicant's signature to this application for service constitutes verification of said authority for installation.

WASHINGTON

WITNESS

DATED July 29th 1935

BY J Anderson APPLICANT

TITLE

SUPERSEDES

TEL. NUMBER Met 2626

NAME SAME

EFFECTIVE ON

WILL ASSUME OUTSTANDING CHARGES

ORDERING NO.

FULL NAME

SERV. CONN. CHG. $ NONE

INSTALLATION CHG. $

ADV. PAY ON ACCT. $

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INC.	REV. DECR.	MISCELLANEOUS INFORMATION
	10/30	C	PBX B-MB					
			3 Eqs WHL	1	3000			
			TK	1	360			
			TKS	18	3600			
			MN-D	259	18850			
			MN-H	11	825			
			MN-H	17	850			
			XMN-H	3	150			
			XMN-D	190	9500			
			XB	1	15			
			XG	1	20			
			LD Loops	6	1200			
			MN-CB-W	9	675			
			Cord 25¢	2	60			
			PBX CKT	1	35			
			PBX CKT	1	30			
		62700	ALST	1	00			

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

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INFORMATION FOR DIRECTORY LISTING

CARROLL ARMS HOTEL TAFT — NO DEL

FIRST ST & C AVE

CLASSIFIED HEADING: HOTELS

TEL. NO. ATL 6800

LD 1153 6801 6802 6803 6804 6805

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

PBXB 320 LINE W&L	5 00
1 TRUNK	5 50
3 TRUNKS	6 00
60 STATIONS - MANU SETS	39 00
TOTAL	
SUPERSEDES	55 50

SER. CONN. CHG. $ 61.75 B

ADV. PAY ON ACCT. $

BOND $ COMPANY EXPIRES

BILLING NAME

ADDRESS

MISCELLANEOUS INFORMATION: DD CA (PROBABLY 10-1-36) ATL 6800 ASSIGNED BY TRFC (BULLOCK) CHANGING BY SVCD [illegible] 11.30 AM ON PERSONAL LOC NE CORNER FIRST & C NE.

ESS

TEL. NUMBER

NAME

EFFECTIVE ON

WILL / WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☑ NO ☐

ST. ADDR. DIR. YES ☐ NO ☑

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON, DISTRICT OF COLUMBIA

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME: JEFFERSON L FORD JR — Jefferson L Ford Jr — The Carroll Arms Hotel — APPLICANT

APPLICATION TAKEN BY: J Call Bride — DATED 7 August 1936 — BY — TITLE

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
AUG 10 '36	11/30	T76138	PBXB MB 320L	5 00		W&L	
			1 TK	5 50		100 CALLS	
			3 TK	6 00			
AUG 10 '36	11/30	76138	60 MN-N	39 00		AUG 10 '36	
NOV 30 '36	12/14	T76138-A	60 MN-H		29 00	11941 CORR ALSO CORR	
		T76138-B	76 MN-H	38 00		SCC $0.50 INSTEAD OF $1.25 B	
		T76138-C	1 MN-D	50		HELD TO TRAUTMAN JR	
NOV 30 '36	12/14	T76138-A	5 MN-W	2 50		10 11-27	
DEC 21 '36	12/	T76138-B	76 MN H		38 00	12981 CORR ALSO	
		T76138-B	76 MN H	41 11		CORR SCC 76.12 INSTEAD OF	
	24	T76138-A	5 MN-W		2 50	$0.50 B. — HARRISON JR	
DEC 21 '36		T76138-B	2 MN-W	1 00		10 12-17	
DEC 23 '36	12-23	T76138-C	1 MN-D		50	13012 CORR ALSO CORR SCC 75.24 INSTEAD OF 76.12 B (GREGORY)	
JAN 6 '37			1 MN-N-DS	65		DD 1/4 2 C.C. 76B ALL ALL	

TOTAL

TEL. NUMBER

NAME

EFFECTIVE ON

WILL / WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☒ NO ☐

ST. ADDR. DIR. YES ☐ NO ☒

SUPERSEDES 55 50

MISCELLANEOUS INFORMATION 2D CA (PROBABLY 12-1-36)
ATK 6800 ASSIGNED BY TREC (BULLOCK) CHANGING ON SWBD
Jacks & trunks & Cord [illegible]
11.30 am per Phone to Loc 12-1-36

loc NE CORNER FIRST & C NE

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON [illegible]

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Jefferson L Ford Jr

APPLICATION TAKEN BY J C McBride DATED 7 August 36 BY

Jefferson L Ford Jr APPLICANT
The Evening Star Newspaper Co
TITLE

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
AUG 10 '36	11/30	I-76138	PBXBMG 3201	5 00		WAL	
			1 TK	5 50		100 CALLS	
			3 TK	6 00			
AUG 10 '36	11/30	76138	60 MN-N	89 00			
NOV 30 '36	12/14	I-76138-A	60 MN-H		29 00	11941 COR ALSO COR	
		I-76138-B	76 MN-H	38 00		SEE 80.50 B INSTEAD OF 41.25 B	
			1 MN-D	50		HELD TO TROUBLE DEPT	
NOV 30 '36	12/14	I-76138-A	5 MN-W	2 50		10 11-27	
DEC 21 '36	12/	I-76138-B	76 MN H		38 00	12981 COR ALSO	
	/	I-76138-B	76 MN H	48 00		COR SEE 76.12 B INSTEAD OF	
	12/24	I-76138-A	5 MN-W		2 50	80.50 B. ARRIS on IP	
DEC 21 '36		I-76138-B	2 MN-W	1 00		JNJ 12-17	
DEC 23 '36	12-23	I-76138-C	1 MN-D		50	13012 COR ALSO COR SEE	
						75.24 INSTEAD OF 76.12 B	
						(GREGORY)	
JAN 5 '37		I- Loc.	1 MN-H-05	65		DD 1-5 3 C.C. 1.75 B. ALL ALS	
JAN 5 '37		I- Loc.	CIMTS ¼ MI	1 00		CHGS TO CO 5972 (PSTN)	
						SUBSCRIBER 115 18K CAPITOL TOWERS PHONE	
						FOR MAIN ALS	
JAN 19 '37	1/19	I-11683	2 TK	3 50		R.O. for 1/7 (Replace)	
						D.D 1-19 ADV. TO PLT (REARRANGED)	
						ASSIGN ATL 6804-05 ARRANGED	
						WITH TRAFFIC (PAYTES) UNDERLINE ON	
						SWBD SEE 6.25 B 1-19	

255

~~BRADMOOR Adventist~~ DIAL

DESCRIPTION FOR DIRECTORY LISTING

CLASSIFIED HEADING

~~NORTH CAP. BET. I & L ST~~

HOTEL CONTINENTAL 400 N. CAPITOL DEL D-T-E NAT. 1672-1795

HOTELS 6-2813

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

~~Ref. to 12~~

LISTING FOR ADDITIONAL

(1) KNOTT, J.W. AUTOS

(2) CHAFFEE, A.H.

KNOTT JAMES W. AUTOS LET 2/20

(CLND AUTOMOBILE HIRING BUS) AUX-1096

HOTEL CONTINENTAL LD LOOP 942

CONTINENTAL HOTEL NO DES (CL HD HOTELS)

SEE ST GD

BILLING INFORMATION

SERV. CONN. CHG. $

ADV. PAY. ON ACCT. $

BILL ~~WITH HOTEL CO~~ CONTINENTAL HOTEL ~~420 NORTH CAPITOL~~

B CONTINENTAL HOTEL 420 NORTH CAPITOL

SUPERSEDES

TEL. NUMBER

NAME

EFFECTIVE ON

WILL / WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING ~~X~~ ADDR. TEL. DIR. W

FULL NAME

APPLICATION TAKEN BY ____ DATED ____ MO. ____ BY ____

* LIST OVER AD 6285 3/20/27

~~LD 1 CHARGE~~

~~" " CHG~~

~~LD " 941~~

~~"~~

(NO DIALS DESIRED LB 1287-1288

~~1071~~

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON L 293-1294

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, at the rates specified and as the rates may be changed from time to time either orally or in writing, and agrees to pay all tolls and other charges.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

ESS

Washington Hotel Co

APPLICANT

4th Cap between D & E S.W. SITE

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV INCR.	REV. DEC.	REMARKS
			B PBX			7 00		
			1 TK			4 00		
			3 TK			10 00		
			ST	181		90 50		
			4 Col. Dir			1 00		
OCT 5 '24		28629	CB				25	Disc CB on BR 15 CC
MAR 13 '24	4-15-24	10416	24 ST	24		12 00		Con 3 SC 8th Comp Lite 4/14-24
								3/13-24 Ltr See Jr Chaffee
MAR 17 '24	4/19 Less 5 ST 4/22 Less 42 ST 5/9 Less 81 ST 5/23 Less 18 ST	17716	66 STA.	66		33 00		Con 66 Sta. S.C. 90 B. 4/7 Ltr. Attention Mr Wallace
6-25-24	6/24	26131	ST.		1		50	Dis BR 152 - CC 6-26-24. Work Comp Refer To Mr Redmile
NOV 20 '24	11-20-24	17716-1	4 ST		4		2 00	S.C. 11/20 With 4ST FR ORDER 17716
NOV 26 '24	11-29-24	54268			1		50	C.I.R. 11-26-24 Disc CB

BY CONTINENTAL HOTEL NO DES (CL BY NOTICE)
SEE LST 6 QD (RSH)

BILLING INFORMATION

SERV. CONN. CHG. $

ADV. PAY. ON ACCT. $

~~BILL TO WITH CONTINENTAL HOTEL~~
~~4 SUPERVISORS CAPITOL~~
B. CONTINENTAL HOTEL
420 NORTH CAPITOL

* LIST OVER AD 6235 9/24/29
LD + SURCHG
" " FED
LD " 8-41
" " SVC

(No DIALS DESIRED) LS 1137-1255
1293-1294

TEL. NUMBER
NAME
EFFECTIVE ON
WILL
WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING ~~Not Adv~~ ADDR. TEL. DIR. W

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON
The undersigned requests The Chesapeake and Potomac [illegible] to furnish telephone service and equipment, at the rates specified and subject to the rules on file with the Commission from time to time either orally or in writing, and agrees to pay all bills and other charges therefor.
SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

ESS

Washington Hotel Co
14th & Cap Sts Nw D & L 3rd Floor

APPLICATION TAKEN BY _____ DATED _____ BY _____

ISSUED	COMPL.	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	PEN. DEP.	INFORMATION
			B PBX			7 00		RATE CHG
			1 TK			4 00		
			5 TK			10 00		
			ST	181		90 50		
			4 Col. Opr			1 00		
OCT 5 '28		25679	CB				25	Disc C.B on BR 15 CC [illegible]
MAR 13 '24	4-15-24	10415	24 S T	24		12 00		Con 24 S.T. 84 Cos Complete 4/14-24 3/13-24 Sig. Lee for Chief. Rating.
	Mgmt 6 ST. Frees 4/18							
	11/19 Less 5 ST							MAR 27 '24
MAR 17 '24	3/20 Less 4 ST	7716	66 STA.	66		33 00		Con 66 Sta. S.C. [illegible] 40 B. 4/17 Exp.
	3/19 Less 8 ST							Attention Mr Wallace
	3/22 Less 18 ST		6/12 Less 6 ST					
			40 Less 4 ST - Cash					
L-24-24	6/14	26131	ST		1		50	Dis BR 152 - CC 6-26 24. Mgr
								Work Comp Refer To Mr Redmile. 6th Flr
NOV 29 '29	11-29-29	17716-1	4 ST		4		2.00	S.C. 11/20 WITH 4ST FR ORDER 17716
NOV 26 '29	11-29-29	54268			1		50	C.I.R. 11-26-29 DISCONN
								BR 101 CC. ON COMP.

ISSUED	COMPL.	ORDER NO	NATURE OF WORK
10/5	10/11	38766	INS. MOVE (W 300 S.C.C. Branch 15
6-24-24	6/24	26130	Mov BR 16X To And Pos & CHG FROM WALL TO DESK SET. WORK COMPL. REFER TO MR REDMILED 5BC 6/25
3 '29	12/16	55294	C.T.C. 12/2 Exps Mov BR 26 C To Another Pos.

ISSUED	COMPL.	ORDER NO	NATURE OF WORK
			Position Sec. 3.60B
MAY 3 '29	11		B.R. 5/3/27. Chg. Equip. on Bk. 1 From Wall Set To Desk Set. Move Same.
MAY 28 '29	5/31	26273-A-Sills	J.N.M. 6-28-24
			Corr To Show CHG Exp & Re-M Inst of Cashier
			Footage
MAR 21 '29	3/25	M21-6	Move one BR 5 S.C.C. 1 Pos See M.O. Board Dec 5-27

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INFORMATION FOR DIRECTORY LISTING

NEW COLONIAL HOTEL (NOTES)
1156 15 NW

CLASSIFIED HEADING: HOTELS

TEL. NO. 3245-W
DISTRICT
3436 TO
3442 INCL

INITIAL SERVICE, EQUIPMENT AND RATES PER MONTH

SWITCHBOARD	7	00
FIRST TRUNK WITH 6		
MESSAGES	4	00
6 TRUNKS @ 2.00	12	00
183 STATIONS	91	50
1 EXTENSION STATION		50
3 BOOTHS @ 1.50	4	50
1 PAID LISTING		25
1 GONG		20
3 COLLECTION DEVICES		75
9 STATIONS, HANDSETS	2	25
TURNING TO 1114 VT. AV	7	00
TOTAL	139	95

SER. CONN. CHG. $ 1.50 PJ
ADV. PAY. ON ACCT. $
BOND-$ COMPANY EXPIRES
BILLING NAME NEW COLONIAL HOTEL INC
ADDRESS 1156 15 ST NW

MISCELLANEOUS INFORMATION Date Mar. 17th '33 ESS
For value received, I hereby guarantee payment of all bills payable under this contract. National Capital Bldg Co.
Guarantor
By [illegible] Pres
Address

SUPERSEDES
TEL. NUMBER AND LAST 3436-3442 INCL
NAME THE CAPITAL APARTMENT CORP
EFFECTIVE ON 2-1-33
WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING YES
ST. DOOR DIR.

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

Sign. New Colonial Hotel, Inc. (APPLICANT)
James T. Howard Pres. (TITLE)

FULL NAME

APPLICATION TAKEN BY C.O. Helge DATED 2.13.33

3245-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
MAR 13 33		C24952	ADDMB	2 00			
			1 TR	2 50	4 00	RATE CHNG.	
	3/14		6 TRS.	12 00			
			18 BOND	90 00			
			3 MNM	2 25			
			1 XMND	50			
			3 BOOTHS	4 50			
			1 ANST	25		#3	
			1 XG	20			
			1 TR	2 00	Rate Chng	TO 1114 VT. AV NW.	
			3 MNCBW.	2 25			
MAR 13 33		C	2 ANTS	00		#182	
JN1-33	6/3	M44671				DD 6-3AM NV BR 626 NVENG	
						B/1.50 D SEE MRS HOWARD	
			FNND			50 DD 6-3AM BR 626 OP 91	
			1 MN-H	75			
JN1-33		A49920	1 MND		50	DD CA BR 327 OP 161	
			1 MBW				

PAID LISTING 25
1 GONG 20
3 COLLECTION DEVICES 75
3 STATIONS HANDSETS 2 25
TOLL LINE TO 1114 VT. AV. 1 00
TOTAL 159 95

SUPERSEDES
TEL. NUMBER(S) DIST 347-3442 NGL
NAME THE CAPITAL APARTMENT CORP
EFFECTIVE ON 3-6-33
WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING YES
ST. DOR. DIR.
HUNT PULL NAME
APPLICATION TAKEN BY CO Helge DATED 3.13 '33

MISCELLANEOUS INFORMATION Date March 17th '33 ESS
For value received, I hereby guarantee payment of all bills payable under this contract
National Capital Realty Co.
Guarantor
Address 1341 Connecticut Ave Suite W 36a

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE
The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.
SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS
Since New Colonial Hotel, Inc.
APPLICANT
James T Howard Pres.
TITLE

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
MAR 13 33		C24952	1 MXGMB	2 00			
			1 TK	3 75	4 00	RATE CHNG.	
	3/14		6 TKS.	12 00			
			18 MMD	90 00			
			2 MMH	2 25			
			1 MMD	50			
			3 BOOTHS	4 50			
			1 ALST	25		#3	
			1 XG	20			
			1 TL	2 00	Rate Chng	TO 1114 VT. AV. NW.	
			3 MMCBW.	2 25			
MAR 13 33			2 ALSTS	00		#1 & 2	
JUN 1-33	6/3	M449571				DD 6-3 AM MV BR 626 M VERNA	
						B/.50 B SEE MRS HOWARD	
			1 MN-D		.50	DD 6-3 AM BR 626 GR P 61	
			1 MN-H	75			
JUN 1-33		M449920	1 MN-D		.50	DD CA BR 627 GR P 61	
			1 MN-H	75		(1 GRAY)	
			1 TRUNK	3 60		EDP 12-21-34 MAP 1/2	
AUG 8 34	8/9	M449926	1 MN-H				
			1 MN-D	50	.25	975V CANC. HOLD TO MRS BENNA.	
DEC 30 34	1-11	M449956	MN-D-OS	50		TALK TO MRS HOWARD. MAP 1/2	
			1 Mo	1 00		DD CA SCC 226 Las	
2-27-35	2-27-449-2918		Cnd all Ass't			COLONIAL PHARMACY 1113 16TH NW Drug	
			TO Rear			DOOR NEW CHANNEL TEL TALT	

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HAMILTON HOTEL
14th & K NW

INFORMATION FOR DIRECTORY LISTING
NO DES

CLASSIFIED HEADING
HOTELS

DI 2580-9695
~~DI 9016~~

=14

INITIAL INSTALLATION AND MONTHLY RATE ITEMS	
3 Pos Multiple Swbd Mah	30 00
1 Trunk & 50 Local Messages	3 60
22 Trunks	44 00
300 Main Stas Desk Sets	150 00
18 Main Stas Hand Sets	9 00
5 Main Stas Hand Sets	3 75
1 Auxil Hand set	2 50
2 Alst	00
1 Alst	25

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

MISCELLANEOUS INFORMATION

REMOVAL CHG. $ None No Chg in Interest

INSTALLATION CHG. $

ADV. PAY ON ACCT. $ B.T. 19.37

~~SPECIAL DEPOSIT $5000.00~~ Rec'd
DEP RETURNED 1/26/37 2-6-35
CK # 14616 SERIAL # N38

SUITCASE

TEL. NUMBER DI 2580

NAME Hamilton Hotel Corporation

EFFECTIVE ON Jan 20 1935

WILL NOT ASSUME

ADVERTISING yes

CARD #1

FULL NAME

APPLICATION FOR TELEPHONE SERVICE

AT WASHINGTON D C EXCHANGE

ESS

The undersigned hereby applies to The Chesapeake and Potomac Telephone Company [illegible] to furnish telephone service and equipment, as above specified and as may be ordered from time to time [illegible] service and equipment to be furnished subject to the [illegible] thereto, and agrees to pay therefor all lawfully [illegible] for any multiple switchboard position or machine [illegible] hereinafter or in connection herewith, and discontinued or moved for [illegible] within five (5) years following date of connection, a termination charge based upon the [illegible] and removal are computed as set forth in the Company's lawfully established rules and [illegible] however, that said termination charge shall not exceed a sum equal to the [illegible] for such equipment in force at the time discontinuance or removal is requested, multiplied by the number of months remaining in the five (5) year period.

WITNESS H. A. Connelly

DATE Feb. 18th 1935

HAMILTON REALTY CORPORATION
APPLICANT

D. A. Christoffers Rec
TITLE

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REVENUE	TAX DECK	MISCELLANEOUS INFORMATION
			1 PBXC-MB 3 Pos Mah			30 00		
			1 Trk			3 60		
			22 Trks			44 00		
			300 MN-D			150 00		
			18 MN-H			9 00		
			5 MN-H			3 75		
			1 Auxl-H			2 50		
			2 Alst			00		
			1 Alst			25		
			19 Ex Bells			2 85		
			1 Ex Gong			20		
			1 5/4 Mi			5 00		
			6 Coll Device			1 50		
			1 TL 6/4 Mi			6 00		Rate Chng
			17' Cord			10		
			2 LD Loops			4 00		

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

1 Alst

25

APPLICATION FOR TELEPHONE SERVICE

AT WASHINGTON D C EXCHANGE

ESS

SUBSCRIPTION INFORMATION

SUBSCRIPTION CHG. None No Chg in Interest

INSTALLATION CHG. $

ADV. PAY ON ACCT. $ B 7-19-37

~~SPECIAL DEPOSIT $6000.00~~ Rec'd

DEP RETURNED 1/26/37 2-6-35

CK # 14616 SERIAL # 038

TELEPHONE DI 2580

NAME Hamilton Hotel Corporation

EFFECTIVE ON Jan 20 1935

WILL NOT ASSUME CHARGE

ADVERTISING Ycj

CARD #1

FULL NAME

The undersigned requests the New York Telephone Company and the Chesapeake and Potomac Telephone Company to furnish telephone service at the premises hereinafter specified, as above specified and as may be ordered from time to time, in writing or otherwise, by the undersigned or any person purporting to act for the undersigned, and agrees to pay for such service and equipment to be furnished subject to the rates, rules and regulations of the Companies relating thereto, and agrees to pay therefor all lawfully established charges, including, for any multiple switchboard position or machine switching equipment furnished hereunder, or in connection herewith, and discontinued or moved hereunder or in connection herewith within five (5) years following its connection, a termination charge based upon the cost of such installation and removal as computed as set forth in the Company's lawfully established rates and regulations; provided, however, that said termination charge shall not exceed a sum equal to the product of three months' rental for such equipment in force at the time discontinuance or removal is requested, multiplied by the number of months remaining in the five (5) year period.

WITNESS H A Connelly

DATE Feb 18th 1935

HAMILTON REALTY CORPORATION
APPLICANT

D. A. Christoffers Pres
TITLE

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
			1 PBXC-MB			30 00		
			3 Pos Mah					
			1 Trk			3 60		
			22 Trks			44 00		
			300 MN-D			150 00		
			18 MN-H			9 00		
			5 MN-H			3 75		
			1 Auxl-H			2 50		
			2 Alst			00		
			1 Alst			25		
			19 Ex Bells			2 85		
			1 Ex Gong			20		
			1 5/4 Mi			5 00		
			6 Coll Device			1 50		
			1 TL 6/4 Mi			6 00		Rate Chng
			17' Cord			10		
			2 LD Loops			4 00		

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

2-58

INFORMATION FOR DIRECTORY LISTING

HAY-ADAMS HOUSE — NO DES

1800 16 NW

CLASSIFIED HEADING: HOTELS

TEL. NO. MET 2260 TO 2270 INC. MI 1369

L.D. NO. P. 1180 to 1183

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

10x8 MD 2 POS NAN	12 00
1 TRUNK (110 CALLS)	5 50
10 TIELINES	17 50
145 MAIN STATIONS	72 50
41 EXTENSION STATIONS	20 50
76 HAND SETS	38
5 TRANSMISSION BELLS	75
1 EXTENSION GONG	20
4 LONG DISTANCE LOOPS	7 00
2 FOOT CUTOUTS	50
2 WIRING PLANS # 203	100
2 OPERATOR'S SETS	40
15 ADDL LISTINGS	3 75
TOTAL	143 90

SER. CONN. CHG. $ ~~None~~ 1.00 C.

ADV. PAY. ON ACCT. $

BOND $ COMPANY

BILLING NAME HAY-ADAMS CORP.

ADDRESS 800-16TH N.W.

MISCELLANEOUS INFORMATION JJ 9-4-36 (5)

HAEN MET 2260 TO 2270 INC.

MI 2850
" 2965
" 4372
EXPIRES 5625

ESS

SUPERSEDES

TEL. NUMBER MET 2260

NAME SAME

EFFECTIVE ON 9-4-36

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☑ NO ☐

ST. ADDR. DIR. YES ☑ NO ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Hay-Adams Corporation APPLICANT

APPLICATION TAKEN BY J.C. McBride DATED 3 Sept 1936 BY E.G. O'Brien President TITLE

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
SEP 17 '36	9-17-36	R	2 [illegible] 20L	14 00		WAL	
			1 TK	5 50		110 CALLS	
			10 TK	17 50			
			76 MN-H	38 00			
			69 MN-D	34 50		SEP 17 '36	
			41 XMN-D	20 50			
			5 XB	75			
			1 XG	20			
			4 LD LOOPS	7 00		158-159-74&75	
			2 FOOT CUTOUTS	50			
			2 WP 203	1 00			
			2 OPR SETS	40			
			1 ALST	00		#6	
			2 MN-H	1 30			
SEP 17 '36	9-17-36		15 ALSTS	3 75		#1-2-3-4-5-7&9-10-11-12-13-14-15-16	
SEP 24 '36	1-24	R93366	1 ALST		00	#6 DD DIR. DEL.	
	1-24		7 ALSTS		1 75	#7-9-11-13-14-15-16 (C-39) 7-40-24	

4 LONG DISTANCE LOOPS	7 00
2 FOOT CUTOUTS	50
2 WIRING PLANS @ 2.00	1 00
2 OPERATOR'S SETS	40
15 ADDL LISTINGS	3 75
TOTAL	14 90

MISCELLANEOUS INFORMATION JJ 9-4-36 (S) W
4 GN MET 2260 TO 2270 INC.

ESS

SUPERSEDES
TEL. NUMBER MET 2260
NAME SAME
EFFECTIVE ON 9-4-36
WHO WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING YES ☑ NO ☐
ST. ADDR. DIR. YES ☑ NO ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Hay-Adams Corporation APPLICANT

APPLICATION TAKEN BY J. C. McBride DATED 3 SEPT 1936 BY Eg. O'Brien TITLE President

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
SEP 17 '36	9-17-36 R		2 [illegible] 201	14 00		WA	
			L TK	5 50		110 CALLS	
			10 TK	17 50			
			7 MN-H	37 00			
			6 MN-D	34 50		SEP 17 '36	
			4 XMN-D	20 50			
			3 XB	75			
			1 XG	20			
			4 LD LOOPS	7 00		158-159-74 75	
			2 FOOT CUTOUTS	50			
			2 WP 203	1 00			
			2 OPR SETS	40			
			1 ALST	00		#6	
			2 MN-H	1 30			
SEP 17 '36	9-17-36		15 ALSTS	3 75		#1-2-3-4-5-7 8-9-10-11-12-13-14-15-16	
SEP 24 '36	1 24	R93966	1 ALST		00	#6 DD DIR. DEL.	
	1 24	"	7 ALSTS		1 75	#7-9-11-13-14-15-16 (C-39) J-F9-24	
OCT 6 '36	CORR	[illegible]	1 MN-W	60		DD 10/9 200 RM CLERKS Rms	
OCT 6 '36						OFF ROOM CLK DCC 1 75	
						NR 10/6	
OCT 8 '36	CORR	M [illegible]	1 MN-H		65	(DD 10-9 MV CHG 1.50 @ Desk	
		M [illegible]	1 MN-W	50		RM. CLKS OFC EL 10 8	
OCT 13 '36	CORR	T-98757-A	1 MN-H	65		9714 CORR (GREGORY)	
OCT 13 '36			1 MN-W		50	J 10-12	

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INFORMATION FOR DIRECTORY LISTING

LAFAYETTE HOTEL No DEL

16th & EYE N.W.

TF 16

CLASSIFIED HEADING: HOTELS

TEL. NO. DIST 4320 to 4327 INCL 4208 4209

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

SWITCHBOARD OPR SET		00
1 TRUNK BUS SCHEDULED		1.00
7 ADDL TRUNKS @		1.00
145 MAIN STA @	.75	108.75
2 EX " @	.50	1.00
115 HAND SETS @	.75	86.25
4 " "		00
7 MI MILEAGE TO 1111 VT AV		7.00
1 COIN DEV.		25
TOTAL		195

SER. CONN. CHG. $ NONE NO CHG IN INT

ADV. PAY. ON ACCT. $

BOND $ CASH COMPANY

EXPIRES

BILLING NAME JEFFERSON L. FICKLEN JR.

ADDRESS ~~1111 I NW~~ 40 LAFAYETTE HOTEL 16TH & I NW

MISCELLANEOUS INFORMATION

ESS

SUPERSEDES

TEL. NUMBER 1MC

NAME Thos. H. Ficklen

EFFECTIVE ON

WILL ~~ASSUME~~ OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☐

ST. ADDR. DIR. YES ☐ NO ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for listing directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Jefferson L Ficklen

APPLICANT

APPLICATION TAKEN BY J. KAHN DATED 5/4 1933 BY

TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
MAY 8-33	5/4	12284	PBXB-MB ✓	7.00			
			1 TK	4.00	4.00	Rate Chng.	
		1	7 TK ✓	1.00			
		1	12 MN-H ✓	84.00			
			4 MN-H ✓	2.00			
			27 MN-D ✓	13.50			
			3 XMN-H ✓	2.25			
			1 MN CB-W ✓	.75			
			1 MN-COJ ✓	.50		Loc. 1114 VT AV NW	
			7 ANI ✓	.00			
MAY 8-33	5/4	12289	1 ALIT	.00		+1	
			1 TRUNK	3.60		EFF 12-21-34 MAP 2/4	
MAY 13 33	5/12	12717	1 MN-D OJ		1.50	TO Loc 1114 VT AV NW - Recor.	
			1 ANI ✓		.00	DRAWN. Wash Gas 8-17	

7-4 MI MILEAGE TO 1114 VT AV 7.00
LOCAL DIV. 25

TOTAL 1.25

ADDRESS ~~1701 I NW~~ 916 LAFAYETTE HOTEL X 16TH & I N.W.

MISCELLANEOUS INFORMATION

ESS

SUPERSEDES

TEL. NUMBER NC

NAME Thos. H. Fillebrown

EFFECTIVE ON

WILL ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☐

ST. ADDR. DIR. YES ☐ NO ☐

FULL NAME Jefferson Land

APPLICATION TAKEN BY J. STANTON DATED 5/V 1933 BY

APPLICANT

TITLE

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
MAY 8-'33	5/4	R 13289	PAXB-MB ✓	7.00			
			~~1 TK~~	~~4.00~~	4.00	TOLL CHNG.	
		1	7 TK ✓	14.00			
		1	12 MN-H ✓	54.00			
			4 MN-H ✓	2.00			
			27 MN-D ✓	13.50			
			3 XMN-H ✓	2.25			
			1 MN CB-W ✓	.75			
			1 MN-DOJ 7/4MI ✓	.50		Loc 1114 VT AV N W	
MAY 8-'33	5/4	13289	1 ALIT	.00		+1	
			1 TRUNK	3.60		EFF 12-21-34 MAP 2/4.	
MAY 17 '33	5/12	72717	1 MN-DOJ 7/4MI ✓		1.50 7.00	TR 2 to Loc 1114 VT AV NW. Recor. 2RH INM. Wood Comp 8-17 RO I 72718	
MAY 17 '33	5/12	72718	1 TL-7/4MI ✓	7.00		Loc NAT 9850 - 1114 VT AV N W WORK COMP 8-17 RO 8-17	
OCT 12 '33	10-13	M91221				D.D. 10-12-MV-BR-186-SEE MR HANCK-STEWARD FOR LOC. MV CAS 150 A.	
OCT 30 '33	10/20	M91547	1 MN-H ✓	.25 ✓		DD 10/30 SEC 2.25 B SEE MR. HANCK-STEWARD FOR LOC. JB 4-P	
JAN 24 '34	1/25	I 12818	1 XMN-D ✓	.50		DDI-25 SCC 150B LOC APT 306 ADDRESS SEE DESK CLERK 28-1-24	

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INFORMATION FOR DIRECTORY LISTING

HOTEL MARTINIQUE NO DES
1211-16TH & M NW

CLASSIFIED HEADING: Hotels

TEL. NO. 3245-W
DIST 4150 +0
45th INS
4155

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

220 LINE SWBD MAN	5 00
1 TRUNK LINE	4 00
4 ADDL TRUNK LINES	3 00
1 HAND SET	25
90 STATIONS	45
1 Ft CUT OUT SWITCH	25
2 ADDL LISTINGS	50
TIE LINE TO RIGGS	
GARAGE - 1467 PKW	5 00
"C"	
TOTAL	
SUPERSEDES	68 00

SER. CONN. CHG. $ NONE

ADV. PAY. ON ACCT. $ Deposit 350.00 PD 9-K-31 TRANS FROM OLD ACCT

BOND # COMPANY EXPIRES

BILLING NAME LINWOOD HOTEL CO.

ADDRESS

MISCELLANEOUS INFORMATION

See letter in Spec file Trans pending Deposit of $35.00 from old to acct. LR Hawkins to this acct.

ESS

TEL. NUMBER Dist 4150.

NAME L L HAWKINS

EFFECTIVE ON

WILL ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☒

ST. ADDR. DIR. YES ☐ NO ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Linwood Hotel Company

APPLICANT

APPLICATION TAKEN BY Ray D Pegett DATED 1/10 1934 BY L.S. Hawkins, Pres.

TITLE

3245-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
JAN 10	1-11 R		1 PBX & MB from	5 00		MAH.	
		9345	1 TK		4 00	CHANGE RATE	
			4 TKS	8 00			
			1 MNB-H	25			
		8	90 MNB	44 60			
			1 Ft Cutout	25			
			2 ADDL	50			
			5 [illegible] STAMP	5 00		#1 of 4	
			3 TRUNK	3 60		To Riggs Garage 1467 PKW.	
JAN 26	1-11	9345	3 ADDL	00		EFF 2-21-34 MAP	
	1/29	3245-W	1 MNB	25		1-2	
						D.D. 1-29 LOC. APT. 503. SEC 2-25-6	
						273113 MAH 1/26	
APR 26 34	4/26 R	10443	1 ANT	25		#6. 4/24	
MAY 7 34		10725	1 MNB-H		95		

1467 PKW 5.00

TOTAL

SUPERSEDES 68.00

TEL. NUMBER Dist 4150

NAME L L HAWKINS

EFFECTIVE ON

WILL ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☐

ST. ADDR. DIR. YES ☐ NO ☐

FULL NAME

APPLICATION TAKEN BY Ray Doggett DATED 1/10 19 34

MISCELLANEOUS INFORMATION

SEE letter in Spec file Transferring Deposit of $35.00 from old acct. LR Hawkins to this acct.

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

Linwood Hotel Company

APPLICANT

BY L. E. Shannon, Pres.

TITLE

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
JAN 10	1-11 R		1 PBX & MB	5.00		MAK	
		3315	1 TK				
			4 TKS	8.00		4.00 Change Rate	
			1 MND-H	.75			
		8	34 MND	44.60			
			1 Ft Cutout	.25			
			2 ALST	.50			
			5 STAM	5.00			
JAN 16	1-11	9345	3 TRUNK-V	3.60		#[illegible]	
			3 ALST	.00		To Riggs Garage 1467 PKW.	
JAN 26	1/29	105-34	1 MNB	.75		EFF 2-21-34 MBS	
						1-35	
						D.D. 1-29-34 LOC. APT. 503. SEC 2.25 B	
			1 ANN			3231M3 MBS 1/26	
JAN 26	1/26 R	10443	1 ALST	.75			
FEB 7		10335	1 MNB-H			#6 - 4/34 MBS	
MAR 10	3/10 O	MH335A	1 MNN-H		1.75	DD 5/8 - NO FURTHER VAC - LOC	
						BR 64 - RM 406 - REM INSTR - BAR	
						ACCESS APPLY AT DESK T.C. 5/8	
						4436 CANC 5-9-34	
AUG 16		44044	1 MNH				
AUG 16		44044	1 MND	.50		.75 228/17 MYCH 6.50 B LOC RM	
AUG 17	8/20	44044	1 MN-R	.75		206 LL 8/16 ACCESS APPOINTMENT	
						7267 CANC PLANT 4	
SEP 20	8/19 R	8.50	1 MN-D			CHM-7	
						DISC'I MND-D To CLEAR PLANT	
						RECORDS ONLY, NO WORK REQ'D	

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INFORMATION FOR DIRECTORY LISTING

PENNSYLVANIA HOTEL (NODES) 20 F N.Y.

18

ATL 6100
ATL 6101
ATL 6102
ATL 6103

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

PBX-B MB	MSH	5 00
1 TRUNK		4 00
3 ADD'L TRKS @ 3 00		6 00
88 STATIONS - DESK		44 00
TOTAL		59

SER. CONN. CHG. $ 1 5 18

ADV. PAY. ON ACCT. $

BOND $ COMPANY EXPIRES

BILLING NAME GASSENHEIMER LAWRENCE

ADDRESS

MISCELLANEOUS INFORMATION ASSIGN ATL 6100-01-02-03
ARR WITH TREC (SIMMONS)

ESS

SUPERSEDES

TEL. NUMBER Li 0698

NAME PENNSYLVANIA HOTEL

EFFECTIVE ON 5-9-32

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☐

ST. ADDR. DIR. YES ☐ NO ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON, D.C.

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME

APPLICANT

APPLICATION TAKEN BY H K MacKeon DATED May 13 32 BY

TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
MAY 12 '32	5/13/32	56322	PBX-B MB	5 00		(MAN)	
		"	1 TRUNK	4 00		→ OK. 5/13/32 Mac	
		"	3 ADDL TRKS	6 00		1 Trunk	
		"	88 STATIONS	44 00			
MAY 12 '32	5/13/32		2 ALST	00			
						MAY 12 1932	
MAY 12 32	10-14 AM	116389	1 MN-W			50 (WK. COMP. 10/11 LOC ON BR.	
			1 MN-D	50		# 601	
			1 19'CD	00		INSTALLATION, ENG. 1.50 B.	
OCT 12 32	10-14 AM					MV. BRS # 6151601 MV. ENG. B.M.G. DAVENPORT B. 10/12	
NOV.	11-4	129-25	3 MN-D			NO WORK TO CORRECT ALL DE-	
			1 MN-N	75		2 00 PARTMENT RECORDS EFF 5-13-	
			1 19'CD	00		32. { PHYSICAL CHECK TOP }	
NOV-4 32		129-25	1 WP 203	50		{ PLANT MOBERLEY 10 18/32 }	
NOV-8 32						1.50 11/5	

MISCELLANEOUS INFORMATION ASSIGN ATL 6100-01-02-03
ARR WITH TRFC (SIMMONS)

TOTAL

SUPERSEDES

TEL. NUMBER Li 0698

NAME PENNSYLVANIA HOTEL

EFFECTIVE ON 5-9-32

~~WILL NOT~~ ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☐

ST. ADDR. DIR. YES ☐ NO ☐

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON, DISTRICT OF COLUMBIA

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Pennsylvania Hotel Co. inc.

APPLICANT

APPLICATION TAKEN BY H. MacKean DATED May 1932 BY

TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
MAY 12 32	5/13/32	56222	PBX-B MB	5 00		(MAH)	
		"	1 TRUNK	4 00		→ OK. 5/13 3L Mas 1 Trunk	
		"	3 ADDL TRKS	6 00			
		"	99 STATIONS	44 00			
MAY 12 32	5/13/32		2 ALST	00			
						MAY 12 1932	
MAY 12 32	10-14 M	116389	1 MN-W			50 WK. COMP. 10/11 L.O.E. ON BR.	
			1 MN-D	50		# 601	
			1 9"CD	M		INSTALLATION, CHG. 1.50 B.	
OCT 12 32	10-14 M					MV. BRS. # 601 & 601 MV. CHG. B. & B. DAVENPORT Bd. 10/12	
NOV. -	11/7.	124825	3 MN-D			2 00 NO WORK TO CORRECT ALL DEPARTMENT RECORDS EFF 5-13-32. PHYSICAL CHECK FOR PLANT MODERNIZ 10/28/32	
			1 MN-N	75		130 11/4	
			1 13"CD	M			
NOV-4 32		129825	1 WP 203	50			
NOV-8 32		M130845	1 MN-N			75 NO WORK - TO CORR. REC - TERM	
NOV-2 32	11/10.	130845	1 MN-D	50		IN WP 203 Pd 11/8	
MAY 31 33	6-1 M	49212				DD 6/1 NUMBRS 110 + 314 NO MV CHG APPLIES LESS THAN 3 FT MW 5/21	
JAN 5 33	6-12	M52360				DD 6/12 TO MV BR 110 & 314 NO MV CHG APPLIES LESS THAN 3 FT CORR 6/4	

523

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INFORMATION FOR DIRECTORY SECTION

RALEIGH HOTEL
12 & PA AV NW

HOTELS

NATL 3810
LD LOOPS
41-42-43
76 77

= 15

2757-2761-
3276-3770-3775
3774-7710-7711
7070-7056

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

PBXC 4 POSITIONS	40 00
1 TRUNK (110 CALLS)	5 50
20 TRUNKS	35 00
480 MAIN STATIONS	240 00
7 EXTENSION STATIONS	3 50
4 LONG DISTANCE LOOPS	7 00
2 EXTENSION BELLS	30
2 ADDITIONAL LISTINGS	1 50
500' MILEAGE 1212 E NW	60

DD ROUTINE

BILLING INFORMATION

SERV. CONN. CHG. $ NO SCC

INSTALLATION CHG. $

ADV. PAY ON ACCT. $

ESS

SUPERSEDES

TEL. NUMBER NATL 3810

NAME RALEIGH HOTEL

EFFECTIVE ON

WILL ~~WILL NOT~~ ASSUME OUTSTANDING CHARGES

ADVERTISING

Cecelia S. Van Pelt Mgr. Raleigh
May 20, 1935

FULL NAME

PBX-4-MB

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV INCR	REV DECR
			PBXC			40 00	
			1 TK			5 50	
			20 TK			35 00	
			480 MN-H			240 00	
			7 XMN-H			3 50	
			4 LD LOOPS			7 00	
			2 XB			30	
			2 ALST			1 50	
			500' MILEAGE			60	
			2 MINE SETS			1 50	
			2 PBX-CRT			50	
			1 WP 204			25	
			2 WP 210			2 75	
			2 OPR SETS			40	

MISCELLANEOUS INFORMATION

4 POS

LOC 1212 E NW

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

ESS

SERV. CONN. CHG. $ NO SCC

INSTALLATION CHG. $

ADV. PAY ON ACCT. $

TEL. NUMBER NATL 3810

NAME RALEIGH HOTEL

EFFECTIVE ON

WILL ~~NOT~~ ASSUME OUTSTANDING CHARGES

ADVERTISING ~~YES~~ NO

FULL NAME

Cecelia S. Van Pelt ✓ Mrs. Raleigh
May 20, 1925

PBX-6175

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REVENUE	REVENUE
			PBXC			40 00	
			1 TK			5 50	
			20 TK			3500	
			480 MN-H			24000	
			7 XMN-H			350	
			4 LD LOOPS			700	
			2 XB			30	
			2 ALST			50	
			500' MILEAGE			60	
			2 MINE SETS			150	
			2 PBX-CRT			50	
			1 WP 204			25	
			2 WP 210			275	
			2 OPR SETS			40	

MISCELLANEOUS INFORMATION

4 Pos

2

LOC 1212 E NW

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

524

263

INFORMATION FOR DIRECTORY LISTING

~~MANHATTAN HOTEL CO~~

18 & PA AV NW

ROGER SMITH HOTEL (WADES)

T-T 20.

CLASSIFIED HEADING: HOTELS.

3245-W

NA-2740
2741
2742-2743-2744
2745-2746-2747
2748-2749-2750
2751-2762-2763
2754-3496

LA
~~635~~ 818
~~436~~ 819
816
817

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

SWITCHBOARD	16	00
1 TRUNK 110 4 C	5	50
14 TRUNKS @ 1.75	24	50
223 STATIONS @ 50¢	111	00
3 EXTENSIONS @ 50¢	1	50
181 HAND SETS @ 150	27	15
2 EXTENSION BELLS		30
1 COLLECTING DEVICE		25
1 OPERATOR SET		20
1 L.D. LOOP	1	75
~~CHG-8-31~~		
TOTAL	188	15

SER. CONN. CHG. $ 1 50

ADV. PAY. ON ACCT. $

BOND $ COMPANY EXPIRES

BILLING NAME ~~MANHATTAN HOTEL~~ ROGER SMITH HOTEL

ADDRESS 18 & PA AV NW

MISCELLANEOUS INFORMATION DD 3/31 EFF 4/1

ESS

SUPERSEDES

TEL. NUMBER NAtl. 2740

NAME MANHATTAN HOTEL Corp

EFFECTIVE DATE

WILL ASSUME OUTSTANDING CHARGES

DIRECTORY

ADVERTISING YES ☐ NO ☐ ADV

ST. ADDR. DIR. YES ☐ NO ☐ YES

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

× Roger Smith Hotels Corporation

FULL NAME APPLICANT

APPLICATION TAKEN BY [signature] DATED 3-26 19 31 BY [signature] TITLE Vice Pres.

SIGNED BY PAUL J. HAGAN

3245-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
~~MAR 26 31~~	4/1 TR	34661	1 PBX BNB 2-10 2-25	16 00			
			1 TK (SD)	3 50		MAR 26 31	
			14 TK	24 50			
		1	1 MN-CB-W	75			
	3 X1	43	43 MN-H	21 50			
		78	78 MN-H	165 70			
	3		3 X A. 1-H	1 95			
			2 X B	30			
			1 DIR SET	20			
			1 L-D LOOP	1 75			
			1 ALST		25	#2	
			2 ALST		00	#1 + 3	
			1 13' C.D. MTG.		00		
			1 11' C.D. MTG.		00		
	4/1	34661	1 15' C.D. MTG.		00		
~~APR 12 31~~		40613	1 TK (SD)		3 50	EFF 4/1	

1 COLLECTING DEVICE .25
1 OPERATOR SET .20
1 L.D LOOP 1.75

3-13-81

TOTAL 18815

MISCELLANEOUS INFORMATION DD 3/31 EFF 4/1

ESS

TEL. NUMBER REPL. 2740 SUPERSEDES

NAME MANHATTAN HOTEL COOP

EFFECTIVE ON WILL ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☒ ADV. YES

ST. ADDR. DIR. YES ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME * Rouse Smith Hotels Corporation

APPLICATION TAKEN BY [signature] DATED 3-26 19 81 BY [signature] APPLICANT

SIGNED BY PAUL J. HAGAN TITLE

3345-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
3/26/81	3/27	R 34661	1 PBX BNB 320 L 2 Wk	16 00			
			1 TK (5D)	3 50		MAR 26 '81	
			14 TK	24 50			
		1	1 MN-CB-W		75		
	2 X 1	43	43 MN-H	21 50			
		78	78 MN-H	115 70			
	3		3 X MN-H	1 95			
			2 XB		30		
			1 OPR SET		20		
			1 L-D LOOP	1 75			
	1		1 ALST		25	#2	
			2 ALST		00	#1 + 3	
			1 13' CO MS/MTG		00		
			1 11' CO MS/MTG		00		
3/26/81	3/27	34661	1 15' CO MS/MTG		00		
APR 12 '81	4/14	R 40612	1 TK (5D)			3.50 EFF 4/1	
APR 12 '81		40612	1 TK (11D)	5 50		LOT 4/10	
4/26/81	4/26	R 46363	1 ALST		00	#3 HANDLE FOR DIRECTORY ALPHA	
		46363	1 ALST		00	#4 LETTER LW 4/22	

525

2264

INFORMATION FOR DIRECTORY LISTING

HOTEL STATLER — NO DES
16TH & K N.W.

AUTHORITY OF SUBSCRIBER: OK Evans, OK Ivey

CLASSIFIED HEADING: HOTELS — AUTHORITY OF SUBSCRIBER: OK Evans — EX 1000

INITIAL SERVICE; EQUIPMENT AND RATES PER MONTH

701-A DIAL P.B.X.		
8 ATTENDANTS POSITIONS	80 00	
15 SELECTORS	22 50	
8 CONNECTORS	16 00	
(MIN.) POWER EQUIPMENT	25 00	
INITIAL C.O. TRUNK (1ST)	5 50	
54 ADDITIONAL C.O. TRUNKS	94 50	
~~9~~ 10 P.B.X. STATIONS	~~47 00~~ 52 00	
~~15~~ 16 L.D. LOOPS	~~36 25~~ 39 75	

BILLING INFORMATION

SERV. CONN. CHG. $ ~~5.94.25~~
INSTALLATION CHG. $ NONE
ADV. PAY. ON ACCT. $ B
K. STR. P.B.X. & CUT

SUPERSEDES

TEL. NUMBER
EFFECTIVE ON
ASSUME OUTSTANDING CHARGES
ADVERTISING YES

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

1) ~~HOTELS STATLER CO INC NO DES FCL HO HOTELS~~
2) ~~STATLER HOTELS CO INC NO DES FCL HO HOTELS~~
3) STATLER HOTEL NO DES [CL. HO. HOTELS]
4) (NOLAN JAS. E.) PHYS OFC (CL-HO PHYS & SURGS MD)
5) ~~(KING ARLEN E) PHYS OFC (CL-HO PHYS & SURGS MD)~~

AUTHORITY OF SUBSCRIBER IN	AUTHORITY OF SUBSCRIBER OUT
OK.	OK.
OK	OK
OK.	OK.
OK	OK
OK.	OK.
OK	OK
OK.	OK.
OK	OK
OK.	OK.
OK	OK

MISCELLANEOUS INFORMATION

D.D. ROUTINE — LOC. N.E. COR. 16 & K N.W.
ASSIGN EXECUTIVE 1000 - 1023 INCL AND EX. 5000 - 5022 INCL.
EQUIP FOR ALLOTING SERVICE. ALSO ASSIGN EX. 2057 TO 2071 INCL. DO NOT EQUIP FOR ALLOTING SERVICE AKR TFC (CORR.)
~~FINAL SERVICE - NO~~ *UNDER CAP TO FOL EX 6772
~~ASSIGN (TOP) TO FOL EX 6772~~

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE — WASHINGTON ZONE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll, local message and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

K Street Realty Corporation — APPLICANT
H B Ralph Jr — PRES. — TITLE

FULL NAME
APPLICATION TAKEN BY William H T Belt — DATE June 19 1942 — BY

Form 3245-W-Z

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. RECR.	REV. DECR.	MISCELLANEOUS INFORMATION
	12/17/42	T44909-A	PBX GMA	1		90 00		(-A14447-B 21163)
	PARTIAL		(9 POS)					
	CUMP.		ITK	1		5 50		(110) EX 1000
			SELECTORS	15		22 50		
			CONNECTOR	8		16 00		
			POWER			25 00		
			ALST	2		00		#1-2
	12/23/42	T44909-B	TKS	2		3 50		EX 5040-5041
	12/23/42	T44909-A	TKS	54		94 50		21163
			TKS	3		5 25		CORR ASSIGN EX 1000 TO 1014 INCL. EX 5000 TO 5014 INCL 1040 TO 1059 INCL - 5040 TO 5049 INCL INST OF ASSIGN EX 1000 TO 1025 INCL. 5000 TO 5025 INCL. EX 1052 TO 1059 INCL. ASSIGN WHEN TFC EQUIP EX 1000 TO 1014 INCL 5000 TO 5014 INCL. FOR ALLOTING SERVICE NOT EQUIP EX 2057 TO 2071

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	CONNECT SUPERVISOR

BILLING INFORMATION

SERV. CONN. CHG. $ 594.25 139.75

INSTALLATION CHG. $ NONE

ADV. PAY. ON ACCT. $ B

K. STR. X-1 P.B.X. - 4 CUL

SUPERSEDES

TEL. NUMBER

EFFECTIVE ON

ASSUME OUTSTANDING CHARGES

ADVERTISING YES

MISCELLANEOUS INFORMATION

D.D. ROUTINE Loc. N.E. Cor. K & K N.W.

ASSIGN EXECUTIVE 1000-1023 INCL AND EX. 5000-5022 INCL. EQUIP FOR ALLOTING SERVICE. ALSO ASSIGN EX. 1052-10-7 INCL. DO NOT EQUIP FOR ALLOTING SERVICE ARR. TFC (Cesur Dual Servu - All *UNDER CAP TO FOL EX 6772

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE WASHINGTON ZONE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll, local message and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME K Street Realty Corporation. APPLICANT

APPLICATION TAKEN BY William H.T. Belt DATED June 19 1944 BY H B Ralph Jr. Pres. TITLE

Form 3445-W-Z

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
	12/17/42	T74909-B	2BXGMB	1		90 00		(-A14447-B 21163)
	PARTIAL		(9 POS)					
	CAMP.		ITK	1		5 50		(110) EX 1000
			SELECTORS	15		22 50		
			CONNECTOR	8		16 00		
			POWER			25 00		
			ALST	2		00		#1-2
	12/23/42	T74909-B	TKS	2		3 50		EX 5040-5041
	12/27/42	T74909-B	TKS	54		94 50		21163
			TKS	3		5 25		CAR ASSIGN EX 1000 TO 1014 INCL EX 5000 TO 5014 INCL 1040 TO 1059 INCL - 5040 TO 5049 INCL INST OF ASSIGN EX 1000 TO 1025 INCL. 5000 TO 5025 INCL. EX 1052 TO 1059 INCL. ASSIGN WHITE TFE EQUIP EX 1000 TO 1014 INCL 5000 TO 5014 INCL. FOR ALLOTING & ROTARY CONNECTIONS DO NOT EQUIP EX 5040 TO 5049 INCL. EX 5040 TO 5049 INCL. FOR ROTARY TEST & ALLOTTING.

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

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INFORMATION FOR DIRECTORY LISTING

~~LEE SHERATON HOTEL NO DES~~ 1 ~~1422~~
~~1511 H ST N.W.~~
~~HOTEL LEE SHERATON NO DES~~
HOTEL LEE SHERATON NO DES
HOTEL SHERATON NO DES

CLASSIFIED HEADING: HOTELS

DI 4800-07 INCL
~~LD 4817~~
~~LD 4816~~
INCL-4808-10

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

2 PBX SWITCH BOARD (MAN)	16	00
1 TRUNK (INCL 110 LOCAL CALLS)	5	50
2 ADD. TRUNKS @ 1.75	3	25
225 MAIN STATIONS @ .50	112	50
2 CALL		10
2 CHANGE		20
2 CUT OUT SWITCH		25
OUT DOOR SET		75
1 LONG DISTANCE LOOP	1	75
1 STATION - INST & N W SOME 1 MI.		50
		30
TIE LINE TO NA 9100 1/4/41	1	00
SPEC CLTS BILLING INFORMATION		
SERV. CONN. CHG. $ 1.00 B	151	13

INSTALLATION CHG. $

ADV. PAY. ON ACCT. $

BILL: LEE HOUSE CO. R P

CJW

SUPERSEDES
TEL. NUMBER DI 4400
NAME FIDELITY-PHILA. TRUST CO
EFFECTIVE ON 1-31-40
WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING { YES / NO } ←

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

1 HOTEL LEE SHERATON. NO DES
~~GL HD - HOTELS~~
2 ~~LEE HOUSE (SEE LEE SHERATON HOTEL)~~
~~GLHD HOTELS~~
3 HOTEL LEE HOUSE (SEE HOTEL LEE SHERATON) (GLHD HOTELS)
4 ~~SHERATON HOTEL NODES (GL HD HOTELS) LH5~~
5 HOTEL SHERATON NO DES (GL HD HOTELS) LH5
6 ~~BELMONT SHERATON NO DES (GL HD HOTELS) LH5~~

4813-18
LD-829

MISCELLANEOUS INFORMATION

EFF 1/31

ESS

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE — WASHINGTON, D.C.

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll, local message and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of said authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

SIGN HERE Kennetta W. Baker — APPLICANT

FULL NAME

APPLICATION TAKEN BY [illegible] DATED 2-1 19 40 BY Manager — TITLE

Form 3295-W-2

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
2-3-40	2	B 14508	PBX BMB 2Ds (32c-L MAN)			16 00 ✓		
			XTK (LIN)			5 50		
			7 TKS			12 25		
			218 MAIN			109 00		
			5 MAN NC			2 50		
			1 MAN NC			50		(PLUG END)
			1 MAN D (CUT OVER SET)			1 25 ✓		
			XB			15 ✓		
			XC			20		
			FT CUTOUT SW			25 ✓		
			2 JACKS			00 ✓		
			5-9' CDs			00		(HS MTG)
			1 LD LOOP			1 75 ✓		(2 WT)
			3 ALST			00		
			1 MAN HOS			50		

BILLING INFORMATION

SERV. CONN. CHG. $ 1.00 B

INSTALLATION CHG. $

ADV. PAY. ON ACCT. $

BILL: LEE HOUSE CORP

CW

SUPERSEDES

TEL. NUMBER DI 4400

NAME ELDERLY-PHILA. TRUST CO

EFFECTIVE ON 1-31-40

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES / NO

MISCELLANEOUS INFORMATION

EFF 1/31

ESS

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll, local message and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

SIGN HERE Kenneth W. Baker — APPLICANT

FULL NAME _____

APPLICATION TAKEN BY _____ DATED 2-1 1940 BY Manager — TITLE

Form 3265-W-I

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
2-3-40	2	R14508	1BX BMB 2Bs (3 Sec-4 MAN)			16 00		
			XTK (110)			5 50		
			7 TKs			12 25		
			218 MAN A			109 00		
			5 MAN HC			2 50		
			1 MAN HC			50	(PLUG END)	
			1 MAN D (CUT DRESS)			1 25		
			XB			15		
			XG			20		
			FT CURRENT SW			25		
			2 JACKS			00		
			5-9' CDs			00	(NS MTG)	
			1 LD LOOP			1 75	(43 112)	
			3 ALST			00	#1.42 9.3	
			1 MAN HOS			50	LOC 1428 L NW	
2-3-40	5	R14508	300' MI			30		

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

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INFORMATION FOR DIRECTORY LISTING — CLASSIFIED HEADING

WASHINGTON HOTEL (NODES) 15TH & PA AV NW

METR 5900-38 INC
KD 6 OOPS 20-36 INC
ME 5980-5984
5941 AUX ME 5949

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

5 POSITION SWITCHBOARD	5		
1 TRUNK WITH 110 CALLS	1	5	50
35 TRUNKS @ 1.75	35	61	25
442 MAINSTATIONS	442	213	35
1 EXTENSION STATION		50	
1 EXTENSION CORD		20	
7 KD 6 OOPS @ 1.75	12	12	25
4 ALSTS		00	
1 ALST		25	

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

1 HOTEL WASHINGTON (NODES) (CLHD HOTELS)
2 TEXWASH CORP (NODES) (CLHD HOTELS)
LIST ADDR AS HOTEL WASHINGTON
3 RUSH FLOYD E RES (CLHD NONE)
LIST ADDR AS HOTEL WASHINGTON
~~SHERIDAN HENRY C RES (CLHD NONE)~~
LIST ADDR AS HOTEL WASHINGTON
5 DONAHUE MARY IRENE MISS RES (CLHD NONE)
LIST ADDR AS HOTEL WASHINGTON

AUTHORITY OF SUBSCRIBER — IN / OUT

BILLING INFORMATION

SERV. CONN. CHG. $ 100 B
INSTALLATION CHG. $
ADV. PAY. ON ACCT. $
BILL TO ~~TEXWASH CORP~~ WASHINGTON HOTEL TEXWASH A CORP IN 15TH & PA AV NW
SUPERSEDES
TEL. NUMBER METR 5900
NAME NATL CAPITAL HOTEL CORP
EFFECTIVE ON 3-26-40
WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING { YES ←

MISCELLANEOUS INFORMATION

LISTED AS NIGHT # IN DI 7718

ESS

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE — WASHINGTON ZONE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll, local message and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

Sec Nicholas Texwash Corp.
APPLICANT
Leon Campbell - Pres
TITLE

FULL NAME

APPLICATION TAKEN BY C F Hewitt DATED 3/1 1940 BY

Form 3245-W-Z

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
3240	3-4	R24862	PBX-MB	1				
			5 POS MB	1		50		
			TRUNK	1		5 50		110
			TRUNKS	35		61 25		
			MN-W-CB	15		11 25		
			MN-H	427		213 35		
			KD 6 OOPS	7		12 25		20-36 INC
			2MN H	1		50		
			XG	1		20		
			ALSTS	4		00		#1, 2, 3 & 4
			ALST	1		25		#5
			1MN-H-OS	1		50		BILLED TO RE 3020
3240	3-4	R24862	300' MI			30		Loc 1413 E NW
MAR 7 '40	3-7	R	ALSI		1			0084 AD 3-7 (CONF SAC)
MAR 9 '40	3-9	I	2MN-H			1 00		DD 4-1 ACC AM LOC RM 601a
			50 PR SETS	5		1 00		402 SEE MR RUSH SEC

1 LONG DISTANCE LOOPS 1.75 12 75
4 LIST MCS 00
1 LISTING 25

BILLING INFORMATION

SERV. CONN. CHG. $ 1.00 B
INSTALLATION CHG. $
ADV. PAY. ON ACCT. $
BILL TO TEXWASH CORP
WASHINGTON HOTEL TEXWASH
A CORP IN TH & PA A NVS
SUPERSEDES
TEL. NUMBER MSTR 5900
NAME NATL CAPITAL HOTEL CORP.
EFFECTIVE ON 3-25-40
WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING YES

1 LIST ADDR AS HOTEL WASHINGTON
5 DONAHUE MARY IRENE MISS RES (CHG NAME)
1 LIST ADDR AS HOTEL WASHINGTON

MISCELLANEOUS INFORMATION

LISTED AS NIGHT # ON DIR 7718

ESS

APPLICATION FOR TELEPHONE SERVICE

WASHINGTON METROPOLITAN EXCHANGE — WASHINGTON ZONE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified, and as may be ordered from time to time, and agrees to pay all toll, local, message and other charges in accordance with the Company's tariffs. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

SCH NEAR Texwash Corp.

FULL NAME

APPLICATION TAKEN BY C F Hewlett DATED 3/1 1940 BY Leon Campbell - Pres. APPLICANT TITLE

Form 3245-W-Z

ISSUED	COMPLETED	ORDER NO.	SERVICE	IN	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
3 2 40	3 4	R 24862	DBX-MB					
			5 POS MI	1		5.00		
			TRUNK	1		5.50		110
			TRUNKS	35		61.25		
			MN-W-CB	15		11.25		
			MN-H	421		213.50		
			LD LOOPS	7		12.25		20-26 INC
			XMN H	1		.50		
			X6	1		.20		
			AC ST S	4		.00		#1, 2, 3 + 4
			AC ST	1		.25		#5
			1MN-H-03	1		.50		BILLED TO RE 3090
3 2 40	3 4	R 24862	300 MI			.30		LOC 1V13 E NW
MAR 7 '40	3 7	R	AC SI		1			CONF 4 BP 3 7 (CONF SAC)
MAR 9 '40	4 1	I	2MN-H			1.00		3 4-1 (CO) ACC AM LOC RM 601A
			5 OPRSETS	5		1.00		602 SEE MK RUSH SCC
								1.50 B P 3/24

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK
MAR 18 '40	3 1	R	CHG BILL IN BP 3-18				

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INFORMATION FOR DIRECTORY LISTING

WILLARD HOTEL NODES PA AV & 14TH NW

CLASSIFIED HEADING

HOTELS

NAT 4420-36
ENC-4446-47
-4449
4445
4427 43
44[illegible]
MA 4440-41
DA 4432
6139 4282
6139 4[illegible]
CHARD 4[illegible]
0783 4[illegible]
1411 4[illegible]
3203 4456
2272 4[illegible]
2373
2978

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

SWITCH BOARD 6 POS.	60	00
1ST TRUNK	4	00
30 TRUNKS	60	00
13 COLLECTION DEVICE	9	75
6 HD REC.		30
1 EXTENSION BELLS	1	20
16 CORDS	1	60
2 OPERATOR SETS.	2	00

SEE ATTACHED CARD

SERV. CONN. CHG. $ NONE

ADV. PAY. ON ACCT. $ NONE

BILLS TO
THE WILLARD INC

SUPERSEDES

TEL. NUMBER NAT 4420-36 INC-4446-47-4915-4449

NAME CAPITOL HOTEL CO 4320-21-4424-25

EFFECTIVE ON 7-16-29

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING { NOW ~~NOW~~ NOOK TEL DIR

FULL NAME

APPLICATION TAKEN BY

CARD NO 1. SEE NO 2

INFORMATION FOR ADDITIONAL DIRECTORY LISTING

12 71 72

NO CHANGE IN LISTINGS. SEE ATTACHED CARD

INC

PRES. FRANK S HIGHT.

V PRES.

SEC'Y

TREAS.

REF RIGGS NAT BANK

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish service and equipment as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

DATED 8/2 19 29

THE WILLARD INC.

APPLICANT

By Frank S. Hight

TITLE PRESIDENT.

ESS

Form 0000

ISSUED	COMPLETED	ORDER NO.	SERVICE	NO.	OUT	REV. INCR.	REV. DECR.	MISCELLANEOUS INFORMATION
AUG 3 29	9/5	25282	PBX-MB	1	60 00			6 POS. NO SPECIAL
			TK	1	4 00			
			TKS	30	60 00			
			MNCBW	13	9 75			
			HDREC	6	30			
			XB	1	1 20			
			CORD		1 60			
			OPR	1	2 00			
			ANST	13	3 25			
			INTRMDIATE BD	1	3 25			
			MTH	3	2 25			
			BOOTHS	3	7 50			
			DROPS	6	12 00			
			MNI	5	27 50			
			[illegible]		3 00			[illegible]
			AMID	10	5 00			
			ALT	3	30			
AUG 3 29								

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

ADV. PAY. ON ACCT. $ NONE

NONE

INC

PRES. FRANK S HIGHT

V PRES.

SEC'Y

TREAS.

REF RIGGS NAT BANK

0783 [illegible]
1411 [illegible]
3203 4156
2372 4415
2373
2978

B BILLS TO
THE WILLARD INC

SUPERSEDES

TEL. NUMBER NAT 4420-36 INC-4406-47-1915 APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

NAME CAPITOL HOTEL CO 4320-21-4406-4607-1915-4449

EFFECTIVE ON 7-16-29

WILL NOT ASSUME OUTSTANDING CHARGES

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish service and equipment as above specified and as may be ordered from time to time and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings

ESS

ADVERTISING { SEND NO } HOOK TEL DIR

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME THE WILLARD INC.

APPLICATION TAKEN BY Telpa DATED 8/2 19 29 Frank S. Wright APPLICANT

CARD NO 1. SEE NO 2 SERVICE ORDER SECRETARY TITLE

ISSUED	COMPLETED	ORDER NO.	SERVICE	N	OUT	REV. INCR.	REV. DECR.
AUG 3 29	9/5	[illegible]	PBX MB	1		60 00	
	"		TK	1		4 00	
	"		TKS	30		60 00	
	"		MN C BW	13		9 75	
	"		HD REC	6		30	
	"		XB	1		1 20	
	"		CORD	1		1 40	
	"		OPR SET	1		2 00	
	"		A-S T	13		3 25	
	"		INF. MSG BD	1		3 25	
	"		MSG	3		2 25	
	"		BOOTHS	3		4 50	
	"		CORDS	6		12 00	
	"		MN D	5		27 50	
	"		[illegible]			3 00	
	"		MN D	10		5 00	
AUG 3 29	"		ALT	3		30	

MISCELLANEOUS INFORMATION

6 POS. NO 1 SPECIAL

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

Form 6000-B

Standard Index Card Co. Phila. U.S.A.

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INFORMATION FOR DIRECTORY LISTING

FAIRFAX HOTEL NO DES 2100 MASS AV N.W

CLASSIFIED HEADING: HOTELS

TEL. NO. 3245-W

~~HO 5777~~ HO 5777-93
H 2777
H 5134
H 5866
~~AD 3478~~
EXPIRES

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

1 SWITCHBOARD MR 150 L	6	00
10 TRUNKS	21	60
92 MAIN STATION DESK SETS	46	00
2 MAIN STATION WALL SETS		
WAR COIN COLLECTING DEVICES	1	50
44 MAIN STATION HAND SETS	29	75
9 EXTENSION STATIONS	4	50
12 LISTINGS	2	50
SPECIAL SERVICE OBSERVING EQUIPT		50
1 TOLL TERMINAL	2	60
3 OPERATOR SETS		40
1 FLEX-PHONE		20
30 FEET MILLIVOLT EXTENSION CELLS		90
TOTAL	115	15

SER. CONN. CHG. $ 125.00
ADV. PAY. ON ACCT. $
BOND $ COMPANY B 12-1-37
BILLING TO: ~~H GRADY GORE~~
ADDRESS ~~2100 MASS AV NW~~ C/O MR SHELDON MGR
BILL: 2100 MASS AV NW
MISCELLANEOUS INFORMATION

ESS FOR HO 5866 ARW Inc. Tel ESS

SUPERSEDES
TEL. NUMBER POT 4480 9
NAME AMER. SEC & TRUST CO
EFFECTIVE ON 10-1-35
WILL / WILL NOT ASSUME OUTSTANDING CHARGES
ADVERTISING YES ☒ NO ☐
ST. ADDR. DIR. YES ☐ NO ☐

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

PLEASE SIGN HERE: H. Grady Gore Fairfax Hotel

APPLICANT

FULL NAME

APPLICATION TAKEN BY M. G. Long 6 Sheldon DATED 10-25 19 35 BY

TITLE

3395-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORDS POSTED BY
10-21-35	12-19	R89899	3 ALST		75	# 4, 5, 11	
10-21-35	12-19	R89899	3 ALST	50		# 12 IN DA DIR DEX. EN #18 LET.	
10-26-35	10-26	R92495	1 1BX BMCW SOL	6 00			
			1 TRUNK	3 60			
			9 TRUNKS	18 00			
			92 MNS	46 00			
			2 MN W CB	1 50			
			44 MN W	22 25			
			17 MN H	8 50			
			4 MN S	4 50			
			10 ALSTS	2 50			
			2 ALSTS	00			
			1 SPEC SERV OBS	50			
			1 TOLL TERMINAL	2 00			
			2 PR SETS	40			
			1 FLEX-PHONE	20			
			300 FT MI	90		LOCATED IN BASEMENT	

SPECIAL SERVICE & SERVING EQUIPT		50
1 TOLL TERMINAL	2	00
2 OPERATOR SETS		40
1 FLEX PHONE		20
30 SPEC MIL PACE EXTENSION CELLS		90
TOTAL		
SUPERSEDES	115	15

Bill: 2101 MASS AV NW

MISCELLANEOUS INFORMATION

ESS FOR HO 5746 ESS

ARW Inc. Tel

CONFIRMING

TEL. NUMBER Pot 4680 9

NAME AMER. SEC & TRUST CO

EFFECTIVE ON 10/1/35

WILL NOT ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☑ NO ☐

ST. ADDR. DIR. YES ☐ NO ☐

FULL NAME

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

PLEASE SIGN HERE Paul F. Graddy Jones Jr. APPLICANT

APPLICATION TAKEN BY M. H. Long & Shellard DATED 10-25 '35 BY TITLE

3241-W

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
11-21-35	12-19	R 19119	3 ALST		75	N.H.S. 11	
11-21-35	12-19	R 19119	2 ALST	50		# 13 IN 20 DIR DEL. E.H. W/R LET.	
10-24-35	10-26	R 92497	1 1AX BMESGL	6 00			
			1 TRUNK	3 60			
			9 TRUNKS	18 00			
			92 MND	46 00			
			2 MN W CB	1 50			
			44 MN H	22 25			
			17 MN H	8 50			
			4 1MN D	4 50			
			10 ALSTS	2 50			
			2 ALSTS	00			
			1 SPEC SERV 903	50			
			1 TOLL TERMINAL	2 00			
			2 PR SETS	40			
			1 FLEX PHONE	20			
			300 FT MI	30		LOCATED IN GARAGE	
11-25-35	12-35	R 73591	6 XB	90		E.H. 10/25	
11-12-35	11-12	M 77987	1 MN-D		50	D.D. 11-12 Loc 1PT 310 N.S. W&R MP [illegible]	
"	"	"	1 MN-H	50		(STEPHAN)	
12-19-35	12-20	M 11876	1 MN-D		50	D.D. 12-20 N.S. PAINT 2 50 Loc 1PT 709	
"	12-20	"	1 MN-H	50		M.S. 12-19 (STEPHAN)	
			2 MN-H	13 50			
JAN 8 '36	1-9	M 7895	1 MN-D		50	DD 1-9 AM APT 406 Hs Pay 3 50	
JAN '36	1-9	M "	1 MN-H	50		(STEPHAN) Rel. 8 15	
JAN 22 '36	1-22	M 11928				D.D. 1-22 MV. MV. CHG. 1 50 D Loc. APT. N 15 (ALLEN BLG) P.O.Y. TO M.R. ORDER PL.	LB

269

INFORMATION FOR DIRECTORY LISTING: TWENTY-FOUR HUNDRED SIXTEENTH ~~(illegible)~~ APT HOTEL
2400 - 16TH NW

Metropolitan Life Insurance Company, owners
[illegible] Inc., Agents (Mass. Mutual, D.C.)

CLASSIFIED HEADING: APARTMENTS

TEL. NO. 3365-70: Col 7200 - 10

INITIAL SERVICE, EQUIPMENT AND RATE PER MONTH

2 PBS 75 PBX-MB (Rot)	16 00
1 TL LINK	3 60
13 TRUNKS	20 00
135 / 90 MAIN STA HAND SETS / DESK SETS	10 75
106 HAND SETS	1 [illegible]
38 EXTENSION DESK SETS	19 00
128 ADDITIONAL LSTS	32 00
6 EXT. BELLS	2 40
3 COIN COLLECTORS	75
3123 AMPLIFIER EQUIP	1 25
1 L.D. MOP	2 00
9- 200' MILEAGE 1600 BLK RD	2 70
2 MILEAGE - 1737 COL RD	2 00
TOTAL 2 DIR SETS	40
TOTAL	215 95

SUPERSEDES
TEL. NUMBER Col 7200
NAME ~~[illegible]~~ Twenty-Four Hundred
EFFECTIVE ON
WILL / ~~WILL NOT~~ ASSUME OUTSTANDING CHARGES

SER. CONN. CHG. $ NONE HAS BEEN PAYING BILLS
ADV. PAY. ON ACCT. $
BOND $ COMPANY EXPIRES

BILLING NAME ~~Twenty-Four Hundred~~ MERIDIAN MANSIONS
ADDRESS 2400 - 16th N.W. c/o A.J. KENNEDY-PALMER

B 3/2 3/38 AM
MISCELLANEOUS INFORMATION: BILLS TO: HOTEL TWENTY-FOUR HUNDRED SIXTEENTH STREET c/o MR F.S. MITCHELL 2400 16th N.W.

BILL: TWENTY-FOUR HUNDRED SIXTEENTH STREET 2400 16TH ST. N.W.

CONF

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

ADVERTISING YES ☐ NO ☐
ST. ADDR. DIR. YES ☒ NO ☐
FULL NAME Twenty-four Hundred 2400-16th St. N.W. by J. F. Kelly Jr. Manager APPLICANT
APPLICATION TAKEN BY K. Duncan DATED 3/3 19 36 BY TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
			2 PBS BE BX 75	16 00			
			1 TR	80			
			20 TR	20 00			
			135 MN STA	10 75			
			38 EX STA	19 00			
			95 H S TERM				
			10 H S	1 35			
			128 ALST	32 00			
			6 EXT BELLS	2 40			
			3 COIN COLL	75			
			1 #123 AMPLIFIER	1 25			
			1 L.D. MOP	2 00			
			2 DIR SETS	40			
			9 MILES	2 70		LOC - 1600 BLK RD	
			9.30 " MI	2 70			
			1 MILES	30		LOC 1737 COL RD	
			Total	2 00		Rate change	

3123 AMPLIFIER EQUIP	1 25
LL HAND	2 00
9- 300' MILEAGE NORTHAM RD	3 70
2M MILEAGE - 1737 COL RD	2 00
TOTAL 2 J PR SETS	NO
TOTAL	21 95

SUPERSEDES

TEL. NUMBER COL 7200

NAME ~~[illegible]~~ Twenty-four Hundred

EFFECTIVE ON

WILL ~~WILL NOT~~ ASSUME OUTSTANDING CHARGES

ADVERTISING YES ☐ NO ☐

ST. ADDR. DIR. YES ☒ NO ☐

MISCELLANEOUS INFORMATION C/O ARR F.S. MITCHELL 2400-16 N.W.

BILL: TWENTY-FOUR HUNDRED SIXTEENTH STREET 2400 16TH ST. N.W

CONF

ESS

APPLICATION FOR TELEPHONE SERVICE AT WASHINGTON EXCHANGE

The undersigned requests The Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, and agrees to pay all toll and other charges. Applicant's signature to this application for service constitutes verification of and authority for initial directory listings.

SUBJECT AT ALL TIMES TO LAWFUL RATES AND REGULATIONS

FULL NAME Twenty-four Hundred 2400-16th St. N.W. By J. Hale Sammons APPLICANT

APPLICATION TAKEN BY C. Devilbiss DATED 3/3 19 36 BY Manager TITLE

ISSUED	COMPL.	ORD. NO.	SERVICE	REVENUE INCREASE	REVENUE DECREASE	MISCELLANEOUS INFORMATION	SERVICE RECORD POSTED BY
			2 PBX BF BR TRK	16 00			
			1 TR	36			
			10 TR	20 00			
			285 MN STA	107 10			
			38 EX STA	19 00			
			95 H S TERM				
			10 H S	1 35			
			128 ALST	32 00			
			N.I.B	2 40			
			3 COIN COLL	75			
			1 #123 AMPLIFIER	1 25			
			1 LL HAND	2 00			
			2 DIP SETS	NO			
			9 MN HUS	4 50		Loc - 1630 KAL RD	
			9 300' MI	2 70			
			1 MN HUS	50		Loc 1737 Col Rd	
			2M MI	2 00		Rate chng.	
			1/4 MI	1 85		eff. 1-6-38 Wash.	
			6 MN-H		3 90	Rate chng.	
			6 MN-H	3 00		eff. 1-6-38 Wash.	

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HOTELS

INFORMATION FOR ADDITIONAL DIRECTORY LISTINGS

MISCELLANEOUS INFORMATION

APPLICATION FOR TELEPHONE SERVICE

AT _____ EXCHANGE

The undersigned requests the Chesapeake and Potomac Telephone Company, to furnish telephone service and equipment, as above specified and as may be ordered from time to time either orally or in writing, such service and equipment to be furnished subject to the lawful rates, rules and regulations applying thereto, and agrees to pay therefor all lawfully established toll and other charges, including for any multiple switchboard position or machine switching installation furnished hereunder, or in connection herewith, and discontinued or moved for whatever cause within five (5) years following its connection, a termination charge based upon the cost of installation and removal and computed as set forth in the Company's lawfully established rules and regulations, provided, however, that said termination charge shall not exceed a sum equal to the service rate for one month for such equipment in force at the time discontinuance or removal is requested, multiplied by the number of months remaining in the five (5) year period.

WASHINGTON PROPERTIES, Inc.

APPLICANT

WITNESS

DATED 2/18 53 BY

		IN	OUT	REV. INCR.	SERV. ORDER	MISCELLANEOUS INFORMATION
			1	4 00		
	AND		45	225 00		
	MN-H		150	75 00		
				21 24		
			171	85 50		
	PLST		255	13		
	X B		41	6		
			2	4		
[illegible]		1976	WP 203	12		6 00

ISSUED	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

APPLICATION FOR TELEPHONE SERVICE

AT Oak Hill EXCHANGE

The undersigned requests the Chesapeake and Potomac Telephone Company to furnish telephone service and equipment, as above specified and as may be ordered from time to time, either orally or in writing, such service and equipment to be furnished subject to the lawful rates, rules and regulations applying thereto, and agrees to pay therefor all lawfully established toll and other charges, including for any multiple switch board position or machine switching station furnished hereunder, or in connection herewith, and discontinued or moved for whatever cause within five (5) years following its connection, a termination charge based upon the cost of installation and removal and computed as set forth in the Company's lawfully established rules and regulations, provided, however, that said termination charge shall not exceed a sum equal to the schedule rate for one month for such equipment in force at the time discontinuance or removal is requested, multiplied by the number of months remaining in the five (5) year period.

WASHINGTON PROPERTIES, Inc.

X.

WITNESS APPLICANT

DATED 2/18 53 BY Hhlgl

Form 4504

			OUT	REV. INER	REV. DECR.	MISCELLANEOUS INFORMATION
		MB 2-4				
		P				
		F	1	4 00		
		3	52	4 00		
		AND	452	228 00		
		MN-H	150	75 00		
		MJ H		21 00		
		2 MJ-2	171	85 50		
		P LST	254	63 50		
		& B	41	6 00		
		Y	2	4 00		
2133	Y	1966 WP 203	12	6 00		

NO.	COMPL.	ORDER NO.	NATURE OF WORK	ISSUED	COMPL.	ORDER NO.	NATURE OF WORK

532

2211

1 D 608 15-00 10/10/41 GUEST LEDGER

MR GROVER LOENING

Ruff 22

The SHOREHAM
Resort Hotel in the Nation's Capital
Washington, D.C.

From Folio 18197
To Folio K-20460

No. K19088

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
LOCAL TELEPHONE CALLS							

Memo		Date	Explanation		Amt.Charged	Amt.Credited	Balance Due	Room No.
	1	MAR23-44	F'WARD ——		*1055.02		* 1055.02	[illegible]
	2	[illegible]	ROOM ••••		* [illegible]		* [illegible]	H[illegible] • •
	3	[illegible]	ROOM ••••		* [illegible]		* [illegible]	H[illegible] • •
	4	MAR26-44	ROOM ••••		* [illegible]		* [illegible]	H[illegible] • •
	5	MAR27-44	ROOM ••••		* [illegible]		* [illegible]	H[illegible] • •
	6	MAR28-44	LDIST ——		* [illegible]			A[illegible]
	7	MAR28-44	LDIST ——		* [illegible]		* 1121.52	A • •
	8	MAR28-44	ROOM ••••		* [illegible]		* 1136.52	H[illegible] • •
	9	MAR29-44	ROOM ••••		* [illegible]		* 1151.52	H[illegible] • •
	10	MAR30-44	ROOM ••••		* [illegible]		* 1166.52	H[illegible] • •
	11	MAR31-44	ROOM ••••		* 15.00		* 1181.52	H[illegible] • •
	12	APR-1-44	—— CARGE		* 30.00		* 1211.52	A D6C8
	13	APR-1-44	LDIST ——		* [illegible]			K[illegible]
	14	APR-1-44	LDIST ——		* [illegible]		* 1212.23	K • •
	15	APR-1-44	RESTR ——		* [illegible]		* 1213.23	H[illegible] • •
	16	APR-1-44	ROOM ••••		* 1500		* [illegible]	H[illegible] • •
	17	APR-1-44	—— POUT	TIP	* [illegible]		* 1228.73	A[illegible]
	18	APR-2-44	LDIST ——		* [illegible]			A[illegible]
	19	APR-2-44	LDIST ——		* [illegible]			A[illegible] • •
	20	APR-2-44	LDIST ——		* [illegible]			A[illegible]
	21	APR-2-44	LDIST ——		* [illegible]		* 1241.15	A[illegible] • •
	22	APR-2-44	VALET ——		* [illegible]		* 1243.15	A[illegible]
	23	APR-2-44	LDIST ——		* [illegible]		* 1244.45	K[illegible]
	24							

REMARKS

TRANSFER TO CITY LEDGER

GUEST'S SIGNATURE _____

CHARGE TO _____

ADDRESS _____

Tel. Co. Chg. 50
Tax 13
Total 63
Exempt Chg. 10

Long Distance Telephone Call

No 13200

Date 4/1 19 44

Name Loening Room 60FD

Name Aig Address

Phone Ele. 5-3000 City New York

Time Called 10:37 PM Connected Disconnected

Minutes 3 Amount $

LPB-1-44 (REST) * 0.65

(Do not write in this space)

KD60R

Shelton (Operator)

BOOKERMAN HOTEL
WASHINGTON, D. C.

LPB-1-44 (REST) * 0.30

GUEST LEDGER

The SHOREHAM
Resort Hotel in the Nation's Capital
Washington, D.C.

Nº K19668

MRS MINNIE MAY FLEMING
TEXAS

From Folio 19171
To Folio 3 04

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
LOCAL TELEPHONE CALLS							

Memo		Date	Explanation		Amt.Charged	Amt.Credited	Balance Due	Room No.
	1	MAR28-44	[illegible]		* [illegible]			K • •
	2	MAR28-44	REST		• [illegible]			KF612
	3	MAR28-44	REST		• [illegible]		* 168.92	K • •
	4	MAR29-44	LUNCH		• [illegible]			AF612
	5	MAR29-44	LUNCH		• [illegible]		* 172.46	A • •
	6	MAR29-44	REST		• [illegible]		* 173.76	AF612
	7	MAR29-44	PHONE		* 0.05		* 173.81	M F612
	8	MAR29-44	LUNCH		• [illegible]			AF612
	9	MAR29-44	LUNCH		• [illegible]		* 175.38	A • •
	10	MAR29-44	PHONE		* 0.10		* 175.45	M F612
	11	MAR29-44	PHONE		• [illegible]		* 178.68	AF612
	12	MAR29-44	REST		• [illegible]		* 181.28	AF612
	13	MAR30-44	REST		• [illegible]		* 182.85	AF612
	14	MAR30-44	LUNCH		• [illegible]			AF612
	15	MAR30-44	LUNCH		• [illegible]		* 189.53	A • •
	16	MAR30-44	PHONE	DATES	* 29.75		* 219.28	AF612
	17	MAR30-44	PHONE		* 0.05		* 219.33	M F612
	18	MAR30-44	PHONE		* 0.10		* 219.43	M F612
	19	MAR31-44	LUNCH		• [illegible]			AF612
	20	MAR31-44	LUNCH		• [illegible]		* 221.97	A • •
	21	MAR31-44	REST		• [illegible]		* 223.62	AF612
	22	MAR31-44	REST		* 3.50		* 227.12	M F612
	23	APR-1-44	LUNCH		• [illegible]			AF612
	24	APR-1-44	LUNCH		• [illegible]		* 232.48	A • •

AF612

REMARKS

TRANSFER TO CITY LEDGER

GUEST'S SIGNATURE _____

CHARGE TO _____

ADDRESS _____

Tel. Co. Chg. 390
Tax .98
* Total 4.88
Service Chg. .40

Ref #35

Long Distance Telephone Call

Date 4 - 1 19 44 No. 13160

Name Mrs Fleming Room 612 F

Name Dr H. Howe Address

Phone Regent 4035-8 City Nig

Time Called 1157 am Connected Disconnected

Minutes 17 Amount $

SPR-1-44 10IST — * 4.88 AR-612

(Do not write in this space)

SHOREHAM HOTEL
WASHINGTON, D. C.

SPR-1-44 10IST — * 0.40

(Operator)

[fol. 537] TELEPHONE COMPANY EXHIBIT NO. 1

American Telephone and Telegraph Company Long Lines Department

Tariff F. C. C. No. 132, 3rd Revised Page 6, Cancels 2nd Revised Page 6.

Message Toll Telephone Service

A. Application of Tariff

1. This tariff is to be used only as provided in the tariffs of the companies listed in 2a. following.

2. This tariff applies to interstate and foreign message toll telephone service furnished by the American Telephone and Telegraph Company, Long Lines Department (hereinafter referred to as the Telephone Company), or furnished jointly by the Telephone Company and concurring, connecting or other carriers, as follows:

a. Interstate service between points in the United States where the service points on a connection are located in the operating territories of two or more of the companies designated below, as such operating territories are defined in the following message toll telephone service tariffs of such companies, or in amendments to and successive issues of said tariffs.

	Tariff F.C.C. No.
Bell Telephone Company of Pennsylvania, The	3
Chesapeake and Potomac Telephone Company, The	3
Chesapeake and Potomac Telephone Company of Baltimore City, The	3
Chesapeake and Potomac Telephone Company of Virginia, The	3
Chesapeake and Potomac Telephone Company of West Virginia, The	3
Cincinnati and Suburban Bell Telephone Company, The	2

	Tariff F.C.C. No.
Diamond State Telephone Company, The	3
Illinois Bell Telephone Company	3
Indiana Bell Telephone Company	3
Michigan Bell Telephone Company	3
Mountain States Telephone and Telegraph Company, The	3
New England Telephone and Telegraph Company	3
New Jersey Bell Telephone Company	3
New York Telephone Company	3
Northwestern Bell Telephone Company	3
Ohio Bell Telephone Company, The	3
Pacific Telephone and Telegraph Company, The	89
Southern Bell Telephone and Telepgraph Company	3
Southern New England Telephone Company, The	2
Southwestern Bell Telephone Company	3
Wisconsin Telephone Company	3

Issued: September 10, 1940 Effective: October 14, 1940.

By H. H. Carter, General Commercial Manager, 32 Sith Avenue, New York, N. Y.

[fol. 538] American Telephone and Telegraph Company, Long Lines Department

Tariff F. C. C. No. 132, 1st Revised Page 10A, Cancels Original Page 10A

Message Toll Telephone Service

Tel. Co. #2

B. General Regulations (Cont'd)

9. *Billing and Collection of Charges*

The charges for telephone calls and chargeable reports are billed and collected by the Bell System Associate Company or the connecting company from whose telephones the calls were sent paid or at whose telephones the calls were received collect.

10. *Regulations of Other Companies*

The Telephone Company assents to, adopts and concurs in the general regulations contained in the message toll telephone tariffs listed in A.2.a. preceding, including amendments thereto and successive issues thereof, which are in addition to the general regulations herein. (T)

Issued: September 10, 1940. Effective: October 14, 1940

By H. H. Carter, General Commercial Manager, 32 Sixth Avenue, New York, N. Y.

[fol. 539] The Chesapeake and Potomac Telephone Company, Message Toll Telephone Service

Tariff F. C. C. No. 3, First Revised Page 7, Cancels Original Page 7

Message Toll Telephone Service

B. General Regulations (Cont'd)

Tel. Co. #2

3. *Priority of Services*

In case a shortage of facilities exists at any time either for temporary or protracted periods, the establishment of local exchange telephone and message toll telephone services shall take precedence over all other services.

4. *Limited Conversation*

The Telephone Company reserves the right to limit the length of conversation when necessary in times of emergency.

5. *Liability of Telephone Company*

a. In view of the fact that the customer has exclusive control of his communications over the facilities furnished him by the Telephone Company, and of the other uses for which facilities may be furnished him by the Telephone Company, and because of the possibility of errors incident to the services and to the use of such facilities of the Telephone Company, and the impossibility of fixing

the cause therefor, the services and facilities furnished by the Telephone Company are subject to the terms, conditions and limitations herein specified.

b. The liability of the Telephone Company for damages arising out of mistakes, omissions, interruptions, delays, or errors or defects in transmission occurring in the course of furnishing service or other facilities and not caused by the negligence of the customer, or of the Telephone Company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall in no event exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruption, delay, or error or defect in transmission continues. (C)

c. When facilities of other companies are used in establishing connections to points not reached by the Telephone Company's facilities, the Telephone Company is not liable for any act or omission of the other company or companies.

Issued: May 2, 1938. Effective: June 1, 1938

By E. G. Bliss, General Commercial Manager, 725 13th Street, N. W., Washington, D. C.

Tariff F. C. C. No. 3. Original Page 9

[fol. 540] The Chesapeake and Potomac Telephone Company

Message Toll Telephone Service

B. General Regulations (Cont'd)

Tel. Co. #4

9. *Deposits*

The Telephone Company may, in order to safeguard its interests, require an applicant for service or a customer to make a suitable cash deposit not to exceed the estimated amount of the total charges for services and facilities for a period of two months, such deposit to be held by the Telephone Company as a guarantee of payment for services or facilities furnished. The

fact that a deposit has been made shall in no way relieve the applicant or customer from complying with the Telephone Company's regulations as to advance payments and the prompt payment of bills on presentation, nor constitute a waiver or modification of the regular practices of the Telephone Company providing for the discontinuance of service for non-payment of any sums due the Telephone Company for services rendered. The amount of the deposit may be refunded at any time at the option of the Telephone Company, or it will be refunded, at the termination of service either by the customer or by the Telephone Company, less such sums as may be due the Telephone Company for services rendered. Interest at the rate of six per cent per annum will be paid on such deposits. No further interest will be paid on a deposit or any part of a deposit which is to be refunded, after date of notice of refund to the customer. The Telephone Company reserves the right to refuse service to customers who are indebted to it for service previously rendered until the indebtedness is satisfied.

10. *Cancelation for Cause*

In the event of the abandonment of the service, the non-payment of any sum due, the use of foul or profane language, the impersonation with fraudulent intent of any person, listening in on party line conversation or any other violation of the lawful regulations of the Telephone Company, the Telephone Company may, without notice, either deny service or terminate the service.

Issued: December 16, 1935. Effective: January 16, 1936

By E. G. Bliss, General Commercial Manager, 725 13th Street, N. W., Washington, D. C.

[fol. 541] The Chesapeake and Potomac Telephone Company

Tariff F.C.C. No. 3, Original Page 11A

Tel. Co. #5

Message Toll Telephone Service

B. General Regulations (Cont'd)

14. *Service Furnished to Hotels, Apartment Houses and Clubs*

Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff.

Issued: January 22, 1944. Effective: February 22, 1944

(1) Effective February 15, 1944 in compliance with Orders of the Federal Communications Commission in Docket No. 6255.

By D. E. McCoy, General Commercial Manager 725 13th Street, N. W., Washington, D. C.

[fol. 542] Telephone Company Exhibit No. 6

The Chesapeake and Potomac Telephone Company,

723 Thirteenth Street Northwest, Washington 5, D. C.

Telephone MEtropolitan 9900

February 12, 1944.

Gentlemen:

You no doubt have seen the Press Release issued by the Federal Communications Commission or have been advised by your hotel association that the Commission's Order of December 10, 1943, in its Docket No. 6255, has resulted in

arrangements whereby the Telephone Companies have filed tariffs with the Federal Communications Commission prohibiting the collection of surcharges on interstate and foreign toll messages. A copy of the F. C. C.'s Press Release and an excerpt of our tariff filing on this matter are attached for your information.

The effect of this Order and tariff filing is that beginning February 15, 1944 no surcharges can be collected on interstate and foreign toll calls. However, as of that date, we plan to pay a commission of 15% on the interstate and foreign sent-paid and received-collect toll messages from guest rooms in those hotels which have private branch exchanges with telephones in guest rooms, and which are generally recognized, such as by the hotel trade itself, as doing a transient business and which have a substantial proportion of transient guests.

A special agreement covering these new arrangements is being prepared and we will call on you shortly to discuss these matters with you.

Very truly yours, —— ——, Manager.

Attachment.

[fol. 543] Federal Communications Commission Publicity Release

"The Federal Communications Commission's Order of December 10, 1943, in its Docket No. 6255, requiring the filing of tariff schedules governing surcharges collected by hotels, apartment houses, and clubs in the District of Columbia, has resulted in arrangements whereby the American Telephone and Telegraph Company and the other Bell System companies will file tariffs with the Commission prohibiting the collection by hotels, apartment houses, and clubs throughout the United States of any charge for interstate and foreign long distance telephone calls in addition to the regular tariff charge of the telephone company. In its proceeding in Docket No. 6255, the Commission found that hotels and clubs in the District of Columbia have been collecting from their patrons such additional charges, termed "surcharges." Many hotels throughout the United States follow a similar practice.

"The first tariff to prohibit the collection of these extra charges was filed with the Commission today by the American Telephone and Telegraph Company and the Chesapeake

and Potomac Telephone Company to be effective February 15, 1944, to apply to long distance telephone calls originating in the District of Columbia, and like filings will be made effective the same date covering the rest of the country. It is estimated that hotels throughout the country are currently collecting surcharges from their patrons in the amount of at least $1,700,000 annually, so that the elimination of these surcharges will result in this amount of saving to the telephone-using public at hotels.

"Beginning February 15, 1944, under the Bell Telephone System tariffs which are being filed, no surcharge may be collected on interstate and foreign long distance telephone calls at hotels, apartment houses, and clubs. Under these tariffs, the telephone user at these places will pay no more for such calls than at public pay stations."

Excerpt from Interstate Toll Tariff Effective February 15, 1944

"Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

[fol. 544] Agreement for Interstate and Foreign Message Toll Telephone Service

The —— ——, hereinafter called the Subscriber, requests The Chesapeake and Potomac Telephone Company, hereinafter called Company, to furnish, and the Company agrees to furnsh, interstate and foreign message toll telephone service through the private branch exchange on the premises of the Subscriber at —— ——, subject to the lawfully established rates and regulations for such service, upon the following terms and conditions:

1. The Subscriber will permit its guests, tenants or members to use the telephone service furnished hereunder.

2. The Subscriber will be responsible for and will pay to the Company all charges at the regular tariff rates for interstate and foreign toll telephone messages, telegrams, cablegrams and radiograms sent-paid from or received-collect at telephones of the private branch exchange,

whether sent or received by the Subscriber for its own account or by or for others.

3. The Subscriber will not make any charges to its patrons or to others in connection with their use of interstate and foreign message toll telephone service, in addition to the charges set forth in the tariffs of the Company.

4. The Company will pay to the Subscriber a commission of 15 per cent on the amounts paid to the Company by the Subscriber for interstate and foreign toll telephone messages sent-paid or received-collect by others than the Subscriber at the private branch exchange telephones in guest rooms.

5. The Subscriber represents that it maintains rooms, equipped with private branch exchange telephones, for occupancy by guests or members for periods of less than one month, and that a substantial proportion of its rooms are regularly so maintained.

6. The Subscriber agrees to provide suitable space, which is convenient for the use of the general public, for the accommodation of an adequate number of booths for public telephones directly connected with the Company's central office, and the Company agrees to install such public telephones and to pay the established public telephone commissions on receipts therefrom.

7. The Subscriber agrees to permit the Company, upon application from any guest, tenant or member occupying space on the premises of the Subscriber, to install and furnish directly to such applicant any of the services of the Company.

8. This agreement shall be effective on —— —— and continue in effect until terminated by 10 days written notice from either party to the other.

—— —— (Subscriber), by —— ——.

The Chesapeake and Potomac Telephone Company, by —— ——.

Date —— —, ——.

[fol. 545] TELEPHONE COMPANY EXHIBIT No. 7

The Chesapeake and Potomac Telephone Company

723 Thirteenth Street Northwest

Washington 5, D. C.

Telephone MEtropolitan 9900

February 19, 1944.

GENTLEMEN:

As stated in our letter of February 12, 1944, the basis on which interstate and foreign message toll service is furnished to hotels, apartment houses and clubs—effective as of February 15, 1944—is as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

Since any surcharges made on interstate and foreign calls after that date would be in violation of the tariffs and the conditions under which service is rendered to you, we believe it important that the following public notice issued by the Federal Communications Commission on February 16, be brought to your attention, in case you have not already seen it:

> "Collection of Hotel Surcharges
>
> "It has come to the attention of the Federal Communications Commission that numerous hotels throughout the country are continuing to collect 'surcharges' or 'service charges' on interstate and foreign long distance telephone calls, in addition to the regular tariff charges of the Bell Telephone Companies and concurring and connecting carriers on file with this Commission. The telephone companies have filed with the Commission, effective February 15, 1944, a tariff provision prohibiting the collection of any such extra charges.

"The collection of any such extra charge by any hotel, apartment house or club on and after February 15, 1944 is contrary to this tariff provision and is therefore illegal under the provisions of the Communications Act of 1934."

We are writing you again because we consider it a matter of urgent importance that the tariffs be fully complied with.

Very truly yours, —— ——, Manager.

[fol. 546] TELEPHONE COMPANY EXHIBIT No. 8

The Chesapeake and Potomac Telephone Company
723 Thirteenth Street Northwest
Washington 5, D. C.
Telephone MEtropolitan 9900

April 3, 1944.

GENTLEMEN:

This is in further reference to our previous letters and discussions regarding commission payments on sent-paid and received-collect interstate and foreign messages at guest rooms. In offering commission payments, we have pointed out that interstate message toll service is now furnished to hotels, apartment houses and clubs upon the condition that the use of the service by guests shall not be made subject to any charge in addition to the message toll charges set forth in the tariffs of this Company filed with the Federal Communications Commission.

As the hotels have now had ample opportunity to bring their practices into accord with this provision of the Company tariff, the Company will hereafter make commission payments only to hotels which have advised us in writing of their present and continuing compliance with the tariff provision prohibiting surcharges. This may be done either through signing the attached agreement or the attached letter. Commissions will be paid on interstate and foreign toll calls made after April 10, 1944 only where such a signed agreement or letter is in our hands.

Very truly yours, —— ——, Manager.

Attachments: Agreement, Letter.

[fol. 547] Agreement for Interstate and Foreign Message Toll Telephone Service

The ——, hereinafter called the Subscriber, requests The Chesapeake and Potomac Telephone Company, hereinafter called Company, to furnish, and the Company agrees to furnish, interstate and foreign message toll telephone service through the private branch exchange on the premises of the Subscriber at——, subject to the lawfully established rates and regulations for such service, upon the following terms and conditions:

1. The Subscriber will permit its guests, tenants or members to use the telephone service furnished hereunder.

2. The Subscriber will be responsible for and will pay to the Company all charges at the regular tariff rates for interstate and foreign toll telephone messages, telegrams, cablegrams and radiograms sent-paid from or received-collect at telephones of the private branch exchange, whether sent or received by the Subscriber for its own account or by or for others.

3. The Subscriber will not make any charges to its patrons or to others in connection with their use of interstate and foreign message toll telephone service, in addition to the charges set forth in the tariffs of the Company.

4. The Company will pay to the Subscriber a commission of 15 per cent on the amounts paid to the Company by the Subscriber for interstate and foreign toll telephone messages sent-paid or received-collect by others than the Subscriber at the private branch exchange telephones in guest rooms.

5. The Subscriber represents that it maintains rooms, equipped with private branch exchange telephones, for occupancy by guests or members for periods of less than one month, and that a substantial proportion of its rooms are regularly so maintained.

6. The Subscriber agrees to provide suitable space, which is convenient for the use of the general public, for the accommodation of an adequate number of booths for public telephones directly connected with the Company's central office, and the Company agrees to install such public tele-

phones and to pay the established public telephone commissions on receipts therefrom.

7. The Subscriber agrees to permit the Company, upon application from any guest, tenant or member occupying space on the premises of the Subscriber, to install and furnish directly to such applicant any of the service of the Company.

8. This agreement shall be effective on —— and continue in effect until terminated by 10 days written notice from either party to the other.

——, (Subscriber. By ——.)

The Chesapeake and Potomac Telephone Company. By ——.

Date ——.

[fol. 548] The Chesapeake & Potomac Telephone Company
725—13th Street, N. W.
Washington, D. C.

GENTLEMEN:

This is to advise you that the —— does not make and will not make, without notice to the Company, any charges to its patrons or to others in connection with their use of interstate and foreign message toll telephone service, in addition to the charges set forth in the tariffs of the Company.

Very truly yours, —— ——. By —— ——.

Date ——.

[fol. 549] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL—Filed August 2, 1944

To the Honorable Matthew F. McGuire, Associate Justice of the District Court of the United States for the District of Columbia:

Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer & Robert O. Scholz, Washington Properties, Inc., The Carroll Arms Hotel, Inc., Commodore

Hotel Corporation, Washington Hotel Company, Dodge Hotel Corporation, James S. Gore, Hamilton Realty Corporation, Harrington Hotel Company, Inc., Hay Adams Corporation, The Lafayette, Inc., The Lee Sheraton Corporation, Linwood Hotel Corporation, Mayflower Hotel Corporation, New Colonial Hotel, Inc., Lawrence Gassenheimer, Robert D. Blackistone, The Raleigh Hotel Company, Oscar A. de Lima & Edwin A. de Lima, Shoreham Hotel Corporation, Hotel Statler Company, Inc., Twenty-Four Hundred Sixteenth Street, Inc., Washington Properties, Inc., Texwash Corporation, and The Willard, Inc., defendants in the above entitled cause, considering they are aggrieved by the final order and decree of this Court, entered on the 8th day of June, 1944, do hereby pray an appeal from said final order and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the defendants present to this Court, herewith, a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this [fol. 550] cause.

The particulars wherein the defendants consider the order and decree erorneous are set forth in the Assignment of Errors and Prayer for Reversal accompanying this petition and to which reference is hereby made.

The defendants pray that their appeal may be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said final order and decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Parker McCollester, George de Forest Lord, Herbert Brownell, Jr., Attorneys for Defendant Hotel Companies, 25 Broadway New York 4, New York.
Joseph W. Wyatt, Attorney for Defendant Hotel Companies, Southern Building, Washington 5, D. C.

August 2, 1944.

[fol. 551] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed August 2, 1944

Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer & Robert O. Scholz, Washington Properties, Inc., The Carroll Arms Hotel, Inc., Commodore Hotel Corporation, Washington Hotel Company, Dodge Hotel Corporation, James S. Gore, Hamilton Realty Corporation, Harrington Hotel Company, Inc., Hay Adams Corporation, The Lafayette, Inc., The Lee Sheraton Corporation, Linwood Hotel Corporation, Mayflower Hotel Corporation, New Colonial Hotel, Inc., Lawrence Gassenheimer, Robert D. Blackistone, The Raleigh Hotel Company, Oscar A. de Lima & Edwin A. de Lima, Shoreham Hotel Corporation, Hotel Statler Company, Inc., Twenty-Four Hundred Sixteenth Street, Inc., Washington Properties, Inc., Texwash Corporation, and The Willard, Inc., defendants in the above entitled cause, in connection with their petition for an appeal to the Supreme Court of the United States, hereby assign error to the record and proceedings and to the entry of the final order and decree of said District Court on June 8, 1944, in the above entitled cause and say that in the entry of the final order and decree the said District Court committed error to the prejudice of said defendants in the following particulars:

1. The Court erred in concluding as a matter of law [fol. 552] that,

> "The tariff regulation with respect to interstate and foreign message toll telephone service filed with the Federal Communications Commission by defendant The Chesapeake and Potomac Telephone Company on January 22, 1944, to be effective February 15, 1944, and formally concurred in by defendant American Telephone and Telegraph Company, providing that 'Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or

others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company' as set forth in its tariffs, is a legally effective tariff regulation under the provisions of the Communications Act of 1934, as amended, applicable to interstate and foreign message toll telephone service to or from telephone instruments located on the premises of defendant hotel companies. This tariff regulation is binding both on defendant telephone companies and on each of the defendant hotel companies." (Concl. of Law 8.)

2. The Court erred in concluding as a matter of law that,

"The collection by defendant hotel companies from users of interstate and foreign message toll telephone service of an extra charge, or surcharge, in addition to the regular tariff charges specified in the effective and applicable tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the Federal tax on such service, is contrary to the above tariff regulation. The collection by defendant hotel companies of any such surcharge is therefore illegal and should be enjoined. * * *" (Concl. of Law 9.)

3. The Court erred in concluding as a matter of law that,

"Any questions as to the justness and reasonableness of the above tariff regulation should be first submitted to the Federal Communications Commission for its determination under the Communications Act of 1934, as amended, and any such questions may be properly submitted to a Court, only after a prior determination by that Commission." (Concl. of Law 10.)

4. The Court erred in concluding as a matter of law that,

"A permanent injunction shall issue restraining the defendant hotel companies, and each of them, and all persons acting under the authority or control of each of them, including their officers, agents, and servants, from charging, demanding, collecting, or receiving any

charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of defendant hotel companies, other than the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the applicable Federal taxes." (Concl. of Law 14.)

[fol. 553] 5. The Court erred in concluding as a matter of law that,

"The surcharges being collected by defendant hotel companies from users of interstate and foreign message toll telephone service to and from the premises of defendant hotels are charges for and in connection with interstate and foreign telephone toll communication service, within the meaning of the Communications Act of 1934, as amended." (Concl. of Law 6.)

6. The Court erred in failing to conclude as a matter of law that Sec. 221(b) of the Communications Act of 1934 (U. S. C. Title 47, Sec. 221(b)) provides for an exception to the applicability of said Communications Act of 1934 to and the jurisdiction of the Federal Communications Commission over all interstate and foreign communications by wire.

7. The Court erred in concluding as a matter of law that,

"The telephone communication service provided to persons in their use of interstate and foreign message toll telephone service by means of private branch exchange extension stations located on the premises of defendant hotel companies is 'telephone toll service' within the meaning of Section 3(s) of the Communications Act of 1934, as amended (47 U. S. Code, Section 153(s)), and it is not 'telephone exchange service' within the meaning of Section 3(r) of the Communications Act of 1934, as amended (47 U. S. Code, Sec. 153(r)). The surcharges collected by defendant hotel companies in connection with interstate and foreign message toll telephone service are therefore not excluded from the jurisdiction of the Federal Communications Commission by the provisions of Section

221(b) of the Communications Act of 1934, as amended, (47 U. S. Code, Sec. 221(b))." (Concl. of Law 11.)

8. The Court erred in concluding as a matter of law that,

> "There is no provision in the District of Columbia Emergency Rent Act (Public Law 327, 77th Congress, approved December 2, 1941) which excludes the Federal Communications Commission from jurisdiction under the Communications Act of 1934, as amended, over the surcharges being collected by defendant hotel companies in connection with interstate and foreign message toll telephone service." (Concl. of Law 12.)

9. The Court erred in finding as a fact that,

> "The effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission for message toll telephone service [fol. 554] apply to interstate and foreign message toll telephone service between all stations located on the premises of defendant hotels, including PBX extension stations, and telephone stations located outside the District of Columbia. The tariff schedules of defendant telephone companies on file with the Federal Communications Commission include the following effective provision, which is applicable to all of their interstate and foreign message toll telephone service:
>
> > 'The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones.'" (Finding 8.)

10. The Court erred in failing to find as a fact and to conclude as a matter of law that the tariff schedules of defendant telephone companies on file with the Federal Communications Commission for message toll telephone service apply only to service beyond the PBX switchboards of the defendant hotel companies.

11. The Court erred in failing to find as a fact that the provision that,

> "The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephone"

applies only to telephone service beyond the PBX switchboards of the defendant hotel companies and should be so interpreted.

12. The Court erred in failing to find as a fact that the additional charges made by the defendant hotels to their guests when such guest makes a toll telephone call are charges for the services described in the 13th finding of fact of the Court, which the defendant hotel companies render or are prepared to render to their guests.

13. The Court erred in finding as a fact that,

> "The surcharges being collected by defendant hotel companies are charges imposed against the users of interstate and foreign message toll telephone service. They are made only when such service is used, and they are a part of the charge made to the users of interstate and foreign message toll telephone service in connection with such use. These surcharges are collected by the defendant hotel companies in connection with interstate and foreign telephone toll communication service." (Finding 23.)

[fol. 555] 14. The Court erred in holding "that the Federal Communications Commission likewise had jurisdiction of the matter of the tariff schedules and so on", and in failing to hold that the Federal Communications Commission had jurisdiction only to the extent that the tariff schedules were valid. (Tr. P. 348)

15. The Court erred in holding that,

> "Any relief along the lines of the tariff schedules that the hotels here may wish, or that the telephone companies here may wish, should be taken up before the Federal Communications Commission." (Tr. P. 348)

16. The Court erred in holding that,

> "* * * if someone who has gotten telephone facilities as a subscriber, from the telephone company—and they have gotten those facilities for their own benefit, to accommodate their guests in the hotel—undertakes, when the messages are going through, to render services to the guests, and then undertakes to surcharge

and make the charge go above, in amount, the tariff schedule, that would be doing indirectly what the telephone company is not allowed to do, and what the law, by its express and implied terms, and by the regulations of this Commission, and its orders, did not mean to allow." (Tr. P. 353)

17. The Court erred in holding that the defendant hotel companies are,

> "* * * violating this tariff schedule of the Federal Communications Commission, they are violating the law, and violating the rules of the Federal Communications Commission, and should be enjoined accordingly." (Tr. P. 356)

18. The Court erred in holding that,

> "The Court will grant an injunction restraining the hotels from adding these surcharges to the bills of the guests of the hotels, in addition to the regular charge for the interstate toll charges." (Tr. P. 356)

19. The Court erred in holding that the tariff schedules and the tariff regulation contained therein, filed January 22, 1944, by the Chesapeake and Potomac Telephone Company, purporting to become effective February 15, 1944, were valid.

20. The Court erred in failing to hold that the tariff schedule and the tariff regulation contained therein filed on January 22, 1944, by the Chesapeake and Potomac Tele- [fol. 556] phone Company, purporting to become effective February 15, 1944, were not valid in so far as they attempt or purport to prevent the defendant hotel companies from making a charge for hotel services rendered.

21. The Court erred in failing to conclude as a matter of law that the tariff schedule upon which this action was based was illegal, invalid and unenforceable in that it represented an attempt of the defendant, the Chesapeake and Potomac Telephone Company, to regulate the charges of the defendant hotel companies to their guests for hotel services, in that it failed to conform to the provisions of Section 203 of the Communications Act of 1934, and in that by it the said telephone company illegally attempted to make the

furnishing of telephone service to subscribers conditioned upon the conduct by said subscribers of their own business activities.

22. The Court erred in failing to find as a fact that the PBX switchboards, the extension stations and connecting lines within each hotel constitute self-contained systems for internal communication.

23. The Court erred in failing to find as a fact that the defendant hotel companies specify the equipment they require, that other equipment is available and could be procured were it not for the refusal of the telephone company to make connection with any equipment not rented from it.

24. The Court erred in failing to find as a fact that the telephone company receives no part of the service charges made by the defendant hotel companies.

25. The Court erred in failing to hold as a matter of law that the provisions of Section 203 of the Communications Act of 1934 imposed no duties and no prohibition upon the defendant hotel companies.

26. The Court erred in finding as a fact and holding that the defendant hotel companies did or could violate the Communications Act of 1934 and in holding that an injunction [fol. 557] should issue against them while finding that the Chesapeake and Potomac Telephone Company which was and is a common carrier subject to said Act did not violate the provisions thereof.

27. The Court erred in holding that the charges made by the defendant hotel companies to their guests are in violation of the tariff schedule filed January 22, 1944, by the Chesapeake and Potomac Telephone Company, purporting to become effective February 15, 1944.

28. The Court erred in entering its order of June 8, 1944, enjoining and restraining the defendant hotel companies and each of them from charging, demanding, collecting or receiving any charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of the defendant hotel companies other than the message toll telephone charges set forth in the applicable and effective tariff schedules of the defendant tele-

phone companies on file with the Federal Communications Commission and the applicable Federal taxes.

29. The Court erred in failing to dismiss the suit and in denying the motion of defendant hotel companies for such dismissal.

Wherefore, the defendant hotel companies pray that the holding of the District Court may be reversed and that the order and decree of the District Court enjoining the defendant hotel companies may be annulled and for such other [fols. 558-575] and fit relief as to the Court may seem just and proper.

Parker McCollester, George de Forest Lord, Herbert Brownell, Jr., Attorneys for Defendant Hotel Companies, 25 Broadway, New York 4, New York; Joseph W. Wyatt, Attorney for Defendant Hotel Companies, Southern Building, Washington 5, D. C.

August 2, 1944.

[fol. 576] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 2, 1944

In the above entitled cause, Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer & Robert O. Scholz, Washington Properties, Inc., The Carroll Arms Hotel, Inc., Commodore Hotel Corporation, Hamilton Realty Corporation, Harrington Hotel Company, Inc., Washington Hotel Company, Dodge Hotel Corporation, James S. Gore, Hay Adams Corporation, The Lafayette, Inc., The Lee Sheraton Corporation, Linwood Hotel Corporation, Mayflower Hotel Corporation, New Colonial Hotel, Inc., Lawrence Gassenheimer, Robert D. Blackistone, The Raleigh Hotel Company, Oscar A. de Lima & Edwin A. de Lima, Shoreham Hotel Corporation, Hotel Statler Company, Inc., Twenty-Four Hundred Sixteenth Street, Inc., Washington Properties, Inc., Texwash Corporation, and The Willard, Inc., defendants, having made and filed their petition praying an appeal to the Supreme

Court of the United States from the final order and decree of this Court in this cause entered on the 8th day of June, 1944, and having also made and filed their Petition for Appeal, Assignment of Errors and Prayer for Reversal and Statement of Jurisdiction, and having in all respects conformed to the Statutes and Rules of Court in such cases made and provided, it is

Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Dis- [fols. 577-582] trict Court of the United States for the District of Columbia in the above entitled cause as provided by law, and it is further

Ordered that the Clerk of the District Court of the United States for the District of Columbia, prepare and certify a transcript of the Record, Proceedings and Decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty days of this date, and it is further

Ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars ($500.00).

August 2, 1944.

Matthew F. McGuire, Associate Justice of the District Court of the United States for the District of Columbia.

MEMORANDUM

August 2, 1944.

Deposit by Jos. W. Wyatt on behalf of defendants 3 to 30, both inclusive, in lieu of bond on appeal—$500.00.

[fol. 583] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed August 11, 1944

To: Charles E. Stewart, Esq., Clerk of the District Court of the United States for the District of Columbia,

SIR:

You are hereby requested to make a transcript of Record to be filed in the Supreme Court of the United States, pur-

suant to an appeal allowed in the above entitled cause, and to include in such transcript of Record, the following papers, to wit:

1. Complaint and Exhibits 1, 2, 3 and 4 thereto attached, filed February 19, 1944.

2. Motion for Preliminary Restraining Order, filed February 19, 1944.

3. Plaintiff's Memorandum of Points and Authorities in support of Preliminary Restraining Order, filed February 19, 1944.

4. Response of Defendant, the Chesapeake and Potomac Telephone Company, filed February 26, 1944.

5. Answer of Ambassador, Inc., (and twenty-six (26) other hotel companies) filed February 28, 1944.

6. Points and Authorities in opposition to Motion for Preliminary Restraining Order, filed February 28, 1944.

[fol. 384] 7. Affidavit of C. J. Mack in opposition to Motion for Preliminary Restraining Order and Exhibit A, thereto attached, filed February 28, 1944.

8. Amended response of the Defendant, the Chesapeake and Potomac Telephone Company, filed February 29, 1944.

9. Affidavit of William K. Norwood and Attachments 1, 2, 3 and 4 thereto attached, filed February 29, 1944.

10. Order Amending Complaint, filed February 29, 1944.

11. Answer of American Telephone and Telegraph Company and the Chesapeake and Potomac Telephone Company, filed March 10, 1944.

12. Findings of Fact and Conclusions of Law, filed June 8, 1944.

13. Order for Permanent Injunction, filed June 8, 1944.

14. Stenographer's transcript of the proceedings held on the Motion for Preliminary Restraining Order on February 29 and March 1, 1944, pages 1 to 119, inclusive.

15. Stenographer's transcript of the proceedings held on the Complaint on April 26 and April 27, 1944, pages 120 to 357, inclusive.

16. Petition for Appeal filed on August 2, 1944.

17. Assignment of Errors and Prayer for Reversal accompanying said Petition for Appeal, filed on August 2, 1944.

18. Statement as to Jurisdiction of the Supreme Court of the United States, accompanying Petition for Appeal, filed on August 2, 1944.

19. Order Allowing Appeal and fixing the amount of the bond on appeal, filed August 2, 1944.

[fol. 585] 20. Statement evidencing deposit on August 2, 1944, of Five Hundred Dollars ($500.00) in cash to secure costs in accordance with the Order Allowing the Appeal.

21. Citation and Proof of Service thereof, filed August 2, 1944.

22. Notice of Allowance of Appeal, enclosing the appeal papers therein, and Statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, together with acknowledgement of service thereof.

23. This Praecipe and acknowledgement of service thereof.

Said transcript to be prepared as required by law and the Rules of this Court and the Rules of the Supreme Court of the United States and to be filed in the Office of the Clerk of the Supreme Court of the United States on or before the 11th day of September, 1944.

August 11, 1944.

Parker McCollester, George de Forest Lord, Her-
[fol. 586] bert Brownell, Jr., Attorneys for Defendant Hotel Companies, 25 Broadway, New York 4, New York; Joseph W. Wyatt, Attorney for Defendant Hotel Companies, Southern Building, Washington 5, D. C.

Service of the above Praecipe accepted and acknowledged this 11 day of August, 1944.

Charles Fahy (A. G.), Solicitor General of the United States.

[fol. 587] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR ADDITIONAL PAPERS TO BE INCLUDED IN THE TRANSCRIPT OF RECORD—Filed August 17, 1944

To: Charles E. Stewart, Esq., Clerk of the District Court of the United States for the District of Columbia.

The Plaintiff, United States of America, requests the clerk to include in the Transcript of Record to be filed in

the Supreme Court of the United States, the following papers, to wit:

1. Motion to amend complaint filed February 29, 1944.
2. Affidavit of John P. Southmayd and E. Stratford Smith, filed February 29, 1944.
3. Affidavit of Eugene L. Burke and Kelley E. Griffith, filed February 29, 1944.
4. Affidavit of Harry J. Rockett and John J. Guerard, filed February 29, 1944.
5. Affidavit of Arthur A. Gladstone and Harold G. Cowgill, filed February 29, 1944.
6. Affidavit of Robert Koteen and John R. Lambert, filed February 29, 1944.
7. Acknowledgement of service of affidavits filed February 29, 1944.
8. Motion to advance hearing on plaintiff's application for Permanent Injunction, filed March 14, 1944.

[fol. 588] 9. Order of advancement of hearing dated March 20, 1944.

10. Plaintiff's Exhibits 1-35, both inclusive.
11. Telephone Company's Exhibits 1-8, inclusive.
12. This Praecipe and acknowledgement of service thereof.

August 17, 1944.

Charles Fahy (A. Q.), Solicitor General of the United States.

ACKNOWLEDGEMENT OF SERVICE

Service of the above Praecipe acknowledged this 17th day of August, 1944.

Parker Wyatt & Ferguson, by Milton Carr Ferguson, Partner.

[fol. 589] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 590] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed September 28, 1944

Come now the Appellants in the above entitled cause, Ambassador, Inc., Washington-Annapolis Hotel Company,

David A. Baer & Robert O. Scholz, Washington Properties, Inc., The Carroll Arms Hotel, Inc., Commodore Hotel Corporation, Hamilton Realty Corporation, Harrington Hotel Company, Inc., Washington Hotel Company, Dodge Hotel Corporation, James S. Gore, Hay Adams Corporation, The Laffayette, Inc., The Lee Sheraton Corporation, Linwood Hotel Corporation, Mayflower Hotel Corporation, New Colonial Hotel, Inc., Lawrence Gassenheimer, Robert D. Blackistone, The Raleigh Hotel Company, Oscar A. de Lima & Edwin A. de Lima, Shoreham Hotel Corporation, Hotel Statler Company, Inc., Twenty-four Hundred Sixteenth Street, Inc., Washington Properties, Inc., Texwash Corporation, and The Willard, Inc., and adopt as their statement of points upon which they intend to rely in this Court, in this case, their Assignment of Errors filed with the Clerk of the United States District Court for the District of Columbia and by him included in the transcript of the [fol. 591] record transmitted to this Court, and in addition thereto, the following points:

Point I

(a). The hotels are not the agents of the telephone companies.

(b). The hotels are not carriers within the meaning of the Communications Act of 1934.

Point II

(a). The charges made by the hotels, which are prohibited by the injunction in this suit, are charges for services rendered to their guests by the hotels; and these services are in addition to the services rendered by the telephone company, for which the telephone tariff is charged.

(b). The services rendered by the telephone company stop at the private switchboard of each hotel, and the telephone company is not permitted under its tariff to render many of the additional services which are rendered by the hotels.

Point III

The charges made by the hotels, constitute a reasonable, business-like arrangement, appropriate to the nature of the business and the services rendered, and measuring the

charges by the outgoing telephone service furnished the guest is a convenient, but not an essential, element of the arrangement.

Point IV

The tariff filed by the telephone company on January 23, 1944, purporting to become effective February 15, 1944, which imposes as a condition of telephone service that these charges cannot be made, is an invalid tariff, and ineffective and not enforceable.

[fol. 592]

Point V

The making and collecting of the charges in question, by the hotels, do not constitute a violation of said tariff.

Point VI

(a). The Communications Act of 1934 does not prohibit charges of the kind made by the hotels and which are the subject of the present suit.

(b). The fulfillment of the purposes of the Communications Act of 1934 does not require the prohibition of these charges.

Point VII

The Communications Act of 1934 does not confer authority on the Federal Communications Commission to require a tariff containing conditions relating to charges made by hotels to guests, and it does not confer authority on the Federal Communications Commission to enforce such a tariff.

Appellants further state that only the following parts of the record as filed in this Court need be printed by the Clerk for the hearing of the case:

Complaint and Exhibits 1, 2, 3 and 4 thereto attached.
Answer of Defendants, Ambassador, Inc., et al.
Order Amending Complaint.
Answer of Defendants, American Telephone and Telegraph Company and the Chesapeake and Potomac Telephone Company.
Findings of Fact and Conclusions of Law.
Order for Permanent Injunction.

Stenographer's transcript of the proceedings held on the Complaint on April 26 and April 27, 1944, pages 120 to 357, inclusive.

[fol. 593] Plaintiff's Exhibits 1 to 27, inclusive.

Plaintiff's Exhibits 32 to 35, inclusive.

Telephone Company's Exhibits 1 to 8, inclusive.

Petition for Appeal.

Assignment of Errors and Prayer for Reversal.

Order Allowing Appeal.

Praecipe for Transcript of Record on Appeal, filed by Defendant hotels.

Praecipe for Transcript of Record on Appeal, filed by Plaintiff.

Clerk's Certificate.

Dated: September 23, 1944.

George de Forest Lord, Herbert Brownell, Jr., Attorneys for Appellants, 25 Broadway, New York, 4, New York. Joseph W. Wyatt, Attorney for Appellants, Southern Building, Washington 5, D. C.

[fol. 594] PROOF OF SERVICE

Service by Appellants of the within Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged by the Appellee, the United States of America, this 25th day of September, 1944.

Charles Fahy (A. Q.), Solicitor General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Joseph W. Wyatt, being duly sworn, deposes and says: I served the within Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed on the Appellee, The American Telephone and Telegraph Company, by mailing a copy of same, postage prepaid, on September 25, 1944, to T. Brooke Price, Esq., Attorney for the American Telephone and Telegraph Company, 195 Broadway, New York, New York. I served the within Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed on the Appellee, The

Chesapeake and Potomac Telephone Company, by mailing a copy of same, postage prepaid, on September 25, 1944, to Spencer Gordon, Esq., Attorney for the Chesapeake and Potomac Telephone Company, Union Trust Building, Washington, D. C.

Joseph W. Wyatt.

Sworn to and subscribed before me this 25th day of September, 1944. Therese M. Tangora, Notary Public, D. C. My Commission expires January 14, 1946.

[fol. 594a] [File endorsement omitted]

[fol. 595] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—November 13, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 48899. District of Columbia, D. C. U. S. Term No. 446. Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer & Robert O. Scholz, a Partnership, et al., Appellants, vs. The United States of America, American Telephone & Telegraph Company, et al. Filed September 9, 1944. Term No. 446, O. T. 1944.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER AND ROBERT O. SCHOLZ, A PARTNERSHIP, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

PARKER MCCOLLESTER,
GEORGE DE FOREST LORD,
JOSEPH W. WYATT,
Counsel for Appellants.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 23189

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, ET AL.,

Defendants.

STATEMENT AS TO JURISDICTION

(Filed August 2, 1944. Charles E. Stewart, Clerk)

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer & Robert O. Scholz, Washington Properties, Inc., The Carroll Arms Hotel, Inc., Commodore Hotel Corporation, Hamilton Realty Corporation, Harrington Hotel Company, Inc., Washington Hotel Company, Dodge Hotel Corporation, James S. Gore, Hay Adams Corporation, The Lafayette, Inc., The Lee Sheraton Corporation, Linwood Hotel Corporation, Mayflower Hotel Corporation, New Colonial Hotel, Inc., Lawrence Gassenheimer, Robert D. Blackistone, The Raleigh Hotel Company, Oscar A. de Lima & Edwin A. de Lima, Shoreham Hotel Corporation, Hotel Statler Company, Inc., Twenty-Four Hundred Sixteenth Street,

Inc., Washington Properties, Inc., Texwash Corporation, and The Willard, Inc., defendants in the above entitled cause, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court upon appeal to review the decree of the District Court.

This is a suit in equity brought in the District Court for the District of Columbia by the United States of America, as complainant, at the instance of the Federal Communications Commission, under the authority of Section 401(c) of the Communications Act of 1934 (47 U. S. C., Sec. 401(c)) to obtain a decree against the defendant telephone companies and defendant hotel companies enjoining alleged violations of Section 203 of said Act (47 U. S. C., Sec. 203). The District Court granted the injunction against the defendant hotel companies in a decree entered the 8th day of June, 1944.

A. Statutory Provisions On Which Jurisdiction Rests

The Statutory provisions that confer jurisdiction upon the Supreme Court to review the decree of the District Court are:

Section 401(d) of the *Communications Act of 1934*, 48 Stat. 1092, 47 U. S. C., Sec. 401(d), which reads as follows:

> "The provisions of the Expediting Act, approved February 11, 1903, as amended, and of Section 238(1) of the Judicial Code, as amended, shall be held to apply to any suit in equity arising under Title II of this Act, wherever the United States is complainant."

Section 2 of the *Expediting Act*, approved February 11, 1903, as amended, 32 Stat. 823, 36 Stat. 1167, 15 U. S. C., Sec. 29, 49 U. S. C., Sec. 45, which reads as follows:

> "In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States

is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

Section 238(1) of the *Judicial Code*, as amended, 36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. 345(1), which reads as follows:

> "A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise:
>
> (1) Section 29 of Title 15, and section 45 of Title 49.
>
> . . . . . .

The three conditions set forth in Section 401(d) of the Communications Act of 1934, *supra*, are met in the present case, to wit, it is a suit in equity, it arises under Title II of said Act, and the United States is the Complainant.

The Supreme Court has held that the Expediting Act, approved February 11, 1903, as amended, and Section 238 of the Judicial Code, as amended, provide for direct appeal to the Supreme Court from a District Court:

Ethyl Gasoline Corporation v. *United States* (1940), 309 U. S. 436.

B. The Statute of the United States Involved in the Suit

The validity of a Statute of the United States is not involved, but the suit does involve the interpretation and application of Section 203 of the *Communications Act of 1934*, 48 Stat. 1070, 47 U. S. C., Sec. 203, which reads as follows:

> "(a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for

interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this Act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communications unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or

(2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense."

C. Dates of Decree and Petition for Appeal

The date of the final decree of the District Court, here sought to be reviewed is June 8, 1944. It reads as follows:

"Order for Permanent Injunction

This cause came on to be heard before the Court on the complaint of plaintiff seeking a permanent injunction, and on the answers of defendants. After a trial held on April 26 and 27, 1944, in which the testimony of witnesses, other evidence, and argument of counsel were presented, the Court found for plaintiff against defendant hotel companies herein, and is this day entering Findings of Fact and Conclusions of Law in support of its judgment.

It appearing that on January 22, 1944, defendant The Chesapeake and Potomac Telephone Company filed with the Federal Communications Commission, as part of its tariff schedules applicable to interstate and for-

eign message toll telephone service, a new tariff regulation, effective February 15, 1944, and which was concurred in by defendant American Telephone and Telegraph Company, providing as follows:

> 'Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club, in addition to the message toll charges of the Telephone Company as set forth in this tariff.'

It further appearing that notwithstanding the provisions of this tariff regulation, and the provisions of Section 203 of the Communications Act of 1934, as amended, defendant hotel companies have since February 15, 1944, continued to collect extra charges, or surcharges, from individuals using telephone private branch exchange extension stations on the premises of defendant hotel companies to make and receive interstate and foreign telephone toll calls, in addition to the regular and effective tariff charges of defendant telephone companies, and the Federal tax, applicable to such calls.

It is, therefore, this 8th day of June, 1944, adjudged, ordered, and decreed, that the defendant hotel companies, and each of them, and all persons acting under the authority or control of each of them, including their officers, agents, servants, and attorneys, be, and they, and each of them, are hereby enjoined and restrained from charging, demanding, collecting, or receiving any charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of defendant hotel companies, other than the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the applicable Federal taxes.

The Court retains jurisdiction over this proceeding in order that it may issue any other injunction against defendants, or any of them, as may appear necessary to effectuate its decision.

By the Court.

(S.) DANIEL W. O'DONOGHUE,
Associate Justice.

Petition for allowance of appeal was presented on August 2, 1944.

D. Substantial Nature of Questions Involved

This is an action in equity instituted under the provisions of Section 401(c) of the Communications Act of 1934, at the request of the Federal Communications Commission, alleging violations by the defendant telephone companies and twenty-seven hotels in the District of Columbia of the provisions of Section 203 of the Communications Act.

The hotels in the District of Columbia, like hotels generally at the present time, provide telephone instruments in hotel rooms so that guests can make and receive calls in their rooms, take and deliver telephone messages for guests, page their guests, and perform other secretarial services. It has been their practice for many years to reimburse themselves for the cost of these services by what are called "service charges" made to guests making telephone calls from their rooms.

In 1942, an investigation of the practices of the telephone companies and the hotels in the District of Columbia was undertaken by the Communications Commission, which by its report and order dated December 10, 1943, found that the services rendered by the hotels were toll telephone communications services subject to the provisions of the Communications Act of 1934 and that any charges therefor should be shown in tariffs filed with it by the telephone companies un-

der the provisions of Section 203 of the Act, or that tariffs should be filed which contained specific provisions with respect to the conditions upon which telephone service would be furnished.

In supposed compliance with the order of the Communications Commission, the telephone companies filed a tariff schedule, which purported to become effective on February 15, 1944, providing as follows:

> "14. *Service Furnished to Hotels, Apartment Houses and Clubs*
>
> Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

The hotels thereafter continued to make their charges and the telephone companies continued to furnish toll telephone service to the hotels, whereupon this action was instituted. The section of the Act alleged to be violated is Section 203 requiring common carriers to file tariffs showing their charges and their classifications, practices and regulations affecting such charges and prohibiting them from making other charges or extending to any person any privileges or facilities in communication except as specified in their tariff schedules.

The District Court found that the telephone companies were not violating the Act and should not be enjoined but that the hotels were violating the Act and should be enjoined.

The questions presented include the following:

1. Whether the services rendered by hotels are toll telephone communications services subject to the Communica-

tions Act of 1934, charges for which, if any, must be shown in tariffs filed with the Communications Commission.

2. Whether the Communications Commission has jurisdiction over the charges of hotels for their services of the character involved.

3. Whether, if the services for which the hotels make their charges are hotel services and do not constitute toll telephone communications by a common carrier within the application of the Communications Act of 1934, the telephone companies may make the furnishing of their toll telephone service conditional upon what the hotels charge for their hotel services in the conduct of their hotel business.

4. Whether hotels, which are not common carriers subject to the requirements of the Communications Act of 1934, can be found guilty of a violation of those provisions and whether an injunction may issue against the hotels, when the telephone companies which are carriers subject to the Communications Act, 1934, are found not to be violating the statute and no injunction is issued against them.

There has as yet been little judicial interpretation of the provisions of the Communications Act of 1934 upon which this action rests. The questions presented are questions as to which no controlling precedents have as yet been announced. They are questions of great concern not only to the hotels in the District of Columbia and to the telephone companies operating there, but also to hotels, clubs and apartment houses and the telephone companies throughout the country.

Furthermore, the amounts involved are very substantial, the charges which the hotels have heretofore collected amounting on the average to several thousand dollars annually for each hotel, so that the aggregate amount of the charges for the hotels directly involved in this case, being

the hotels in the District of Columbia, will exceed $100,000 annually and the aggregate amount of the charges of all hotels interested in the questions involved will be many times this figure.

Oral Opinion

A copy of the transcript o ' the oral opinion delivered by the Court in deciding this case is affixed hereto and marked "Exhibit A."

Conclusion

It is thus clear that this appeal is within the exclusive jurisdiction of the Supreme Court and involves the review of substantial errors of the trial Court.

Respectfully submitted,

PARKER MCCOLLESTER,
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JOSEPH W. WYATT,
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August 2, 1944.

EXHIBIT A

ORAL OPINION OF THE COURT

Pages 348 to 357
of Transcript

"In the first place the Court holds that the law and the regulations involved in this case, whereby the Federal Communications Commission was established and acts, are lawful and valid.

The Court holds that this Court has jurisdiction of the subject matter of this case and of the parties, and that the Federal Communications Commission likewise had jurisdiction of the matter of the tariff schedules, and so on, that were made governing the two defendant telephone companies and others engaged in the telephone business.

Now that covers the points of law that have been raised here.

The Court holds that any relief along the lines of the tariff schedules, that the hotels here may wish, or that the telephone companies here may wish, should be taken up before the Federal Communications Commission.

Now on the matter of motions to strike out certain testimony, or objections, rather, to the admissibility of certain testimony, the Court rules now that it is not to consider and will not consider in its decision any of the testimony, oral or written, that was offered in this case in regard to a proposed 15 per cent commission to be paid by the telephone companies to the hotels. That was merely an offer. It didn't go so far as to be called an offer of compromise because there is no controversy in regard to money or charges between the telephone companies and the hotels. It may be a businesslike proposition on the part of the telephone companies to try to help the hotels out, because they are mighty good customers of the telephone companies.

But whatever the motive was that prompted it, it wasn't an offer of compromise, and even if it were, the Court shouldn't consider it because it was never carried through; and if it was a generous offer—I doubt whether I could go

so far as to say it was—but if it was a businesslike proposition, or if selfish interests were governing the telephone company, whatever it was, it doesn't bear upon the essential issues of law and fact in this case.

Therefore, the Court is not considering any of the evidence, oral or written, that was introduced here in regard to that proposed payment of 15 per cent of the toll charges to the hotel defendants.

Now there has been testimony offered here to show that what the hotels put on the bills of those guests who used the long distance phones was a reasonable charge for secretarial service or hotel service, or whatever else you wish to call it. Well, the Court will not consider or go into the question of whether it is reasonable or unreasonable, because that isn't an issue in this case. Maybe it is most reasonable, and maybe the hotel guest is very well pleased with the amounts that have been charged for the accommodation and services rendered. But that isn't here before me.

I couldn't undertake to say that the hotels are rendering services worth 15 percent of the charge for long distance calls, and therefore could be able to add that amount to the bills of their guests; I couldn't say that the ten per cent that they are apparently charging is too much or a fair charge, or what. So the Court is going to disregard the testimony concerning the reasonabl-ness of this charge, or surcharge, that the hotels are making to their guests for long distance calls. So that is eliminated from the case.

Now although it may not be required of the Court—because the Federal Communications Commission takes an alternative position—to pass upon the issue as to whether the hotels are agents of the telephone companies, or whether they are to be regarded as subscribers, I think a Court ought to take a stand on that because that is a vital issue in this case.

With all due respect to the plaintiff in this case, the Government, I think they ought to come into Court on a definite theory and not leave the Court to choose, and the plaintiff say, 'Well, take this and if you don't like it, take that and make it the basis of your decision.'

In the opinion of the Court the testimony in this case actually fails to show that these hotels are the agents of the telephone company. There was no written agreement to that effect introduced here; there was no oral agreement to that effect introduced here; and there is no testimony, written or oral, from which this Court could imply the existence of any agency in the hotels on behalf of or as agent of the telephone company.

In the opinion of this Court the hotels are subscribers. They enter into a contract with the telephone company. 'You render us such and such service and we will pay you such and such money'. They get the bill every month or two and they pay the telephone company—that was the evidence in this case—the amount that they owe them as subscribers for telephone service from the telephone company.

Now that being so, the telephone companies have no control whatever over what these hotels are doing in regard to this surcharge. But they have knowledge of it. At least, if they didn't have knowledge of it before this case came up, they have knowledge of it today. As a matter of fact the testimony shows that they have had knowledge of it for some time because they have discussed the matter and endeavored to make some settlement of it.

So the telephone companies are charged with what the hotels are doing in regard to these surcharges they are making on the bills of their guests, for toll or interstate messages.

Now that brings up the question of why we have a Federal Communications Commission. Well, maybe some people wish we didn't have it.

Then the question comes up as to what persons, what property or what purpose this Federal Communications Commission was established for. I take it that without doubt it was established for the benefit of the public, and to protect the public in regard to such matters as those involved in this case. They didn't want to leave the public at the mercy of the telephone companies, having a monopoly, as one witness undertook to say, or maybe I suggested it to him. But any way, monopoly or no monopoly, this Act and these Regulations and these tariff schedules in regard to

telephone messages going out through the states, all have the principal purpose of protecting the public against being overcharged. If we didn't have the Federal Communications Commission, and didn't have the regulations, and didn't have these tariff schedules, the telephone companies could say, if you wanted to talk to John Jones in New York, 'Ten Dollars', or 'Twenty Dollars.' The man calling New York from Washington would say, 'That is too much.' They would say, 'Well, if you think it is too much you can't talk, you can take the train and go up and see him.'

Well, you know such things have been done in the past by corporations, especially by public utilities when they weren't under control.

I have said that because the public are the ones to be primarily protected by this Commission and by the law establishing it, and by the Regulations and Orders that it has made.

If someone who is connected with getting these messages from the person telephoning, to the receiver in New York, the person receiving the message, if somebody else who has some connection or part in transmitting those messages undertakes to slap on an extra charge, whether it is 5 per cent, 10 per cent, 20 per cent, or maybe 50 per cent, or it might even be 100 per cent, just doubling it up, if that were permitted it would be negativing in part, or maybe entirely, the purpose of this Commission and the purpose of this law and of the regulations and orders of this Commission, and the public would not be protected in regard to their interstate telephone messages.

Now, that being so, if someone who has gotten telephone facilities as a subscriber, from the telephone company—and they have gotten those facilities for their own benefit, to accommodate their guests in the hotel—undertakes, when the messages are going through, to render services to the guests, and then undertakes to surcharge and make the charge go above, in amount, the tariff schedule, that would be doing indirectly what the telephone company is not allowed to do, and what the law, by its express and implied terms, and by the regulations of this Commission, and its orders, did not mean to allow.

Now under those circumstances I think that the hotels—it isn't for me to say what they should do—but they could render le s service because they were not getting paid for it, just ' ac you could put dimmer lights in the rooms of a hotel, nstead of 60-watt lights you could put in 40-watt lights— that is up to the individual hotel. They are in competitio n with one another and they can spend as little or as much as they see fit in trying to get guests and patrons and trying to keep them.

So in this case they don't have to render all the service that they do. And if it is too expensive—they all appear to be pretty well organized here—they can all agree to cut down on the expense where they are losing money. They could do that or they could charge for these services separately under some other item, whatever they might wish to call it—secretarial services, accommodation for this or that. Or they could go before the Federal Communications Commission and ask to have an allowance put in the tariff schedule; or they could go to the Rent Commission and because of the action of this Court—if an injunction is granted—could say, 'We should get more rent for our rooms'. Or the hotels could go to the food or the drinks commissions and try to get them to permit a raise in the price of food or drinks.

But that is up to the hotels; they will just have to figure out a way to get the money; and if they can't get it this way they will either have to cut down the service or get it some other way.

Then—of course I needn't suggest it but—if they want to they have the proposition made to them of getting 15 per cent from the telephone company.

As I say, these suggestions I have made are just thoughts, but they don't enter into my decision at all. The hotels have, as I have indicated, a number of possible ways in which they may recoup the losses they say they are sustaining; but the Court isn't concerned with that, that is a worry of the hotels and not of this Court.

Accordingly the Court considers that in this case, while it could enjoin these telephone companies if the facts of the case required, from the facts in this case it appears that

the telephone companies are not violating the tariff sche ules at all, and therefore there is no remedy that shou be granted at this time against the telephone companies fo any acts of their own. Since the Court has held that th hotels are not the agents of the telephone companies, ther fore the telephone companies are not responsible for wh the hotels are doing now.

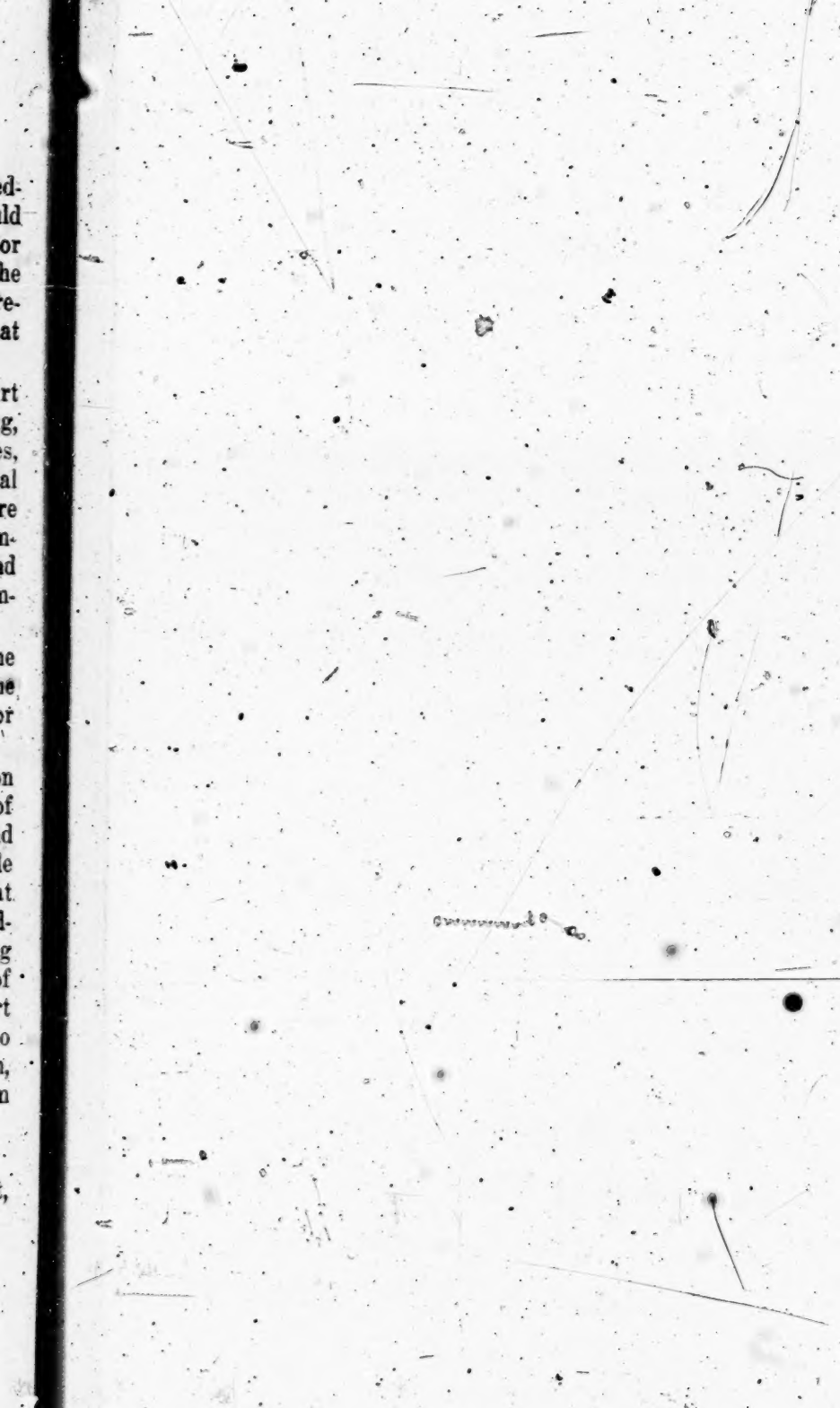
But the hotels know what they are doing, and the Cou holds that they are responsible for what they are doin and they are making the public pay more for toll charge or for interstate telephone charges than what the Feder Communications Commission has allowed, and therefo they are violating this tariff schedule of the Federal Co munications Commission, they are violating the law, an violating the rules of the Federal Communications Co mission, and should be enjoined accordingly.

So the Court will grant an injunction restraining th hotels from adding these surcharges to the bills of th guests of the hotels, in addition to the regular charges fo the interstate toll charges.

The Court will further reserve, in this case, jurisdictio of it so that should the hotels refuse to obey the order this Court, enjoining them from making these charges, an the telephone companies, knowing that they have mad these charges and that they are still making them, and th by rendering them phone service they will thereby be ai ing and abetting them, and indirectly, maybe; encouragi them to violate the order of this Court and the order the Federal Communications Commission, then the Cou would feel that it would have jurisdiction and authority enjoin the telephone companies by mandatory injunctio or prohibitive injunction, rather, prohibiting them fro rendering any further service to those hotels.

That, I think, covers all the issues in the case.

Counsel can confer together and prepare findings of fac conclusions of law, and a judgment in the case."



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., *et al.*,
Appellants,

v.

THE UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, and THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

PARKER MCCOLLESTER,
GEORGE DEFOREST LORD,
JOSEPH W. WYATT,
Attorneys for Appellants.

February 16, 1945.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., *et al.*,
Appellants,

v.

THE UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, and THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS

Opinion of the Court Below

The trial court rendered an oral opinion which is not included in an official report. The oral opinion appears in the record at pages 50-55. The findings of fact and conclusions of law are printed at pages 55-67 of the record.

Statement of the Grounds on Which the Jurisdiction of This Court is Invoked

The jurisdiction of this Court is invoked under the following statutory provisions:

(a) Section 401(d) of the *Communications Act of 1934*, 48 Stat. 1092, 47 U. S. C., Sec. 401(d), which reads as follows:

"The provisions of the Expediting Act, approved February 11, 1903, as amended, and of Section 238(1) of the Judicial Code, as amended, shall be held to apply to any suit in equity arising under Title II of this Act, wherever the United States is complainant."

(b) Section 2 of the *Expediting Act*, approved February 1, 1903, as amended, 32 Stat. 823, 36 Stat. 1167, 15 U. S. C., Sec. 29, 49 U. S. C., Sec. 45, which reads as follows:

"In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof."

(c) Section 238 of the *Judicial Code*, as amended, 36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. 345, which reads in part as follows:

"A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following sections or parts of sections and not otherwise:

(1) Section 29 of Title 15, and section 45 of Title 49."

This Court has jurisdiction under these provisions since (a) this is a suit in equity under Title II of the Communications Act; (b) the United States is the complainant, and (c) the case is here on direct appeal from a final decree of the District Court taken within sixty days from the entry thereof (the decree of the District Court was entered on June 8, 1944, and the appeal was allowed by an associate justice of said court on August 2, 1944).

This Court noted probable jurisdiction on November 13, 1944 (R. 306).

Statement of the Case

The Nature of the Action

This is a civil action instituted in the District Court of the United States for the District of Columbia in the name of the United States as complainant but at the request of the Federal Communications Commission. The complaint alleges that the action was brought pursuant to the provisions of Section 401(c) of the Communications Act of 1934*, (hereafter generally referred to as the Act) to enjoin violation of Section 203* thereof by defendants (R. 4). The defendants named were the American Telephone and Telegraph Company and the Chesapeake and Potomac Telephone Company, herein jointly referred to as the telephone company, and twenty-seven hotels in the District of Columbia (R. 1, 2).

Section 203, in so far as it is here pertinent, by subdivision (a) requires "Every common carrier" to file with the Commission "schedules showing all charges for itself and its connecting carriers for interstate and foreign wire * * * communication * * * and showing the classifications, practices and regulations affecting such charges," and by subdivision (c) provides that

> "no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication or for any service connected therewith * * * than the charges specified in the schedule then in effect, or * * * (3) extend to any person any privilege or facilities in such communication, or employ * * * any * * * practices affecting such charges, except as specified in such schedule."

It is not alleged nor has it been found or proved that the hotels are "common carriers" or "carriers".

Nevertheless it is alleged that the hotels violate these provisions by their long-established practice of making so-called service charges to their guests who avail

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* These and other statutory provisions involved are reproduced in the Appendix hereto.

themselves of the facilities afforded to them by the hotels for making toll telephone calls from their hotel rooms and of the services of the hotels in placing such calls, taking messages, etc. These service charges are designed to compensate the hotels for the substantial expense which they incur in providing telephones and equipment in hotel rooms, operating the PBX switchboards through which the lines in the hotel are connected with the trunk lines of the telephone company, paging guests, taking messages and performing various other services generally described as "secretarial". These service charges are billed to guests by the hotels as a separate item on their hotel bills and are retained by the hotels (R. 61). The hotels also charge their guests the exact amounts of the charges of the telephone company for their respective calls, for which telephone charges the telephone company bills the hotels as subscribers, just as it bills other subscribers. The telephone company does not bill the guests but looks to the hotels for payment (R. 61).

It is alleged that the collection of these service charges by the hotels has violated Section 203 of the Act since February 15, 1944, on which date it is contended that there became effective a new tariff schedule filed with the Commission by the telephone company, which provides:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club, in addition to the message toll charges of the Telephone Company as set forth in this tariff."

Notwithstanding that the hotels are not carriers and that Section 203, by its terms, applies only to carriers, and notwithstanding that the service charges collected by the hotels are retained by them and are not in any way remitted to or received by the telephone company, which receives only its tariff rates, the complaint alleges that

"*each* of the defendants has illegally continued and is illegally continuing to charge, demand, collect, or receive surcharges or service charges for and in connection with interstate and foreign message toll telephone communications * * *." (R. 10)

The hotels, by their answer, denied any illegality on their part in collecting their service charges, denied the validity of the tariff schedule or that it ever became legally effective, denied that their service charges were subject to the provisions of the Communications Act of 1934 or the jurisdiction of the Commission or that they could be regulated in any way by tariffs filed by the telephone company with the Commission, denied the enforceability of the tariff schedule against them, and denied the jurisdiction of the court to issue the injunction prayed for against the hotels (R. 42-45).

The telephone company, by its answer, denied unlawful conduct on its part (R. 47-50).

A motion by the Commission for a temporary restraining order was denied (original record 112, omitted in printing) and the case was tried before District Judge O'Donoghue without a jury.

The Services and Service Charges of the Hotels*

In the lobbies or other accessible locations of all of the defendant hotels, telephone booths have been installed and are available to persons in the hotels, by means of which calls can be made without involving the services of the hotels and their personnel. Charges for these calls are paid directly to the telephone company through coin boxes and are at the tariff rates of the telephone company without any additional charge being made or collected by the hotels (R. 62).

* At the trial of the case on April 26 and 27, 1944, the evidence was limited to the situation at one hotel, namely, The Shoreham, and it was stipulated that the testimony in regard to the facts at the other hotels would be substantially the same (R. 101, 169).

However, the hotels, as a part of their hotel service to their guests, have made it possible for guests to make and receive telephone calls in their rooms by having telephones installed therein connected with the so-called PBX switchboards of the hotels and have also customarily provided numerous message and secretarial services to their guests in connection with telephone messages (R. 57, 60). The telephone company, by regulation, refuses to permit any telephone equipment not procured from it to be connected with its trunk lines, and therefore the telephone instruments in the hotel rooms and the wiring therefor, as well as the PBX switchboard through which the connection is made, must be procured from the telephone company (R. 132, Finding 6, R. 57) although there is other equipment that might be used (R. 132).

The telephone equipment of a hotel consists basically of a private switchboard, known as a PBX board, and extension lines from the switchboard to the rooms, with telephone instruments at the end of each extension line. The trunk lines of the telephone company come to the switchboard and there connect with the hotel's equipment (R. 98). There is various other auxiliary equipment, and the equipment of the Shoreham, which is typical, was described by a witness as follows:

> "The Shoreham has a 6 position switchboard with 39 trunk lines, 2 auxiliary lines, 855 stations, 204 directory listings, 2 mine sets, 2 wiring plans, 8 buzzer circuits, 4 gongs, 29 bells, and a 4-line conference equipment, one booth, 2 additional stations, one lamp indicator, 8 operator sets, 11 long distance terminal loops or trunks, 7 wiring plans #203 and 600 feet of mileage for an off-premise station." (R. 102)

The amount and type of equipment in a hotel is entirely a matter of the hotel's choice (R. 128).

The equipment in the hotel is exclusively under the management and control of the hotel, and is manned by employees of the hotel (R. 128). The cost of the equipment is borne by the hotel in the form of a monthly charge paid

to the telephone company for use of the equipment, and the employees who man the equipment are paid by the hotel (R. 58, 128). Indeed, the telephone company by a tariff provides "All operating at the subscriber's premises must be performed at the expense of the subscriber—" (R. 220). This cost is substantial, the cost to the Shoreham in 1943 being $8,680.10 for use of the equipment, and $21,895.62 for payroll (R. 162).

The telephone equipment in the hotel, beginning with the switchboard, is self-contained, needs no outside service or operator (R. 131) and the service of the telephone company is required only when a call goes outside the hotel, that is to say, on the exterior side of the switchboard (R. 131).

The hotel subscribes to and receives from the telephone company the usual telephone service which is furnished to any business establishment, office, or other subscriber having a private switchboard (R. 128). This service is known as Private Branch Exchange, or PBX, service. There is no difference between the private switchboard installations in, and the service rendered to, hotels and the installations in, and the service rendered to, any private switchboard subscriber, either in available equipment and the charges therefor, or service rendered and the charges therefor (R. 128).

In addition to procuring and paying for the interior telephone equipment, and paying for the operators who man it, the hotel furnishes a variety of services to guests who use the telephones. These can be described best as secretarial services and are comparable to the services rendered by a secretary in a private office (R. 60, 164). As examples, the hotel operators will place and complete long distance calls for a hotel guest (R. 164), thus permitting the guest to go about his business until the called person is ready. This may take several hours in the case of a call to a distant phone when the circuits are busy (R. 161). Incoming messages are received during a guest's absence and memoranda of them left for him (R. 165). Outgoing

messages are transmitted for a guest who will be absent at the time the called person is reached or who has not the time or inclination to deliver them personally. Guests may leave word where they will be at a designated time and calling persons are given this information by the hotel operators. Guests who may not be at the telephones in their rooms are located by hotel employees and called to the phone (R. 165). Guests who are not even in the hotel when an incoming call is received will be reached where possible and advised of calls (R. 165). Guests wishing telephone service suspended for a period are given this protection (R. 166), and guests may advise the hotel operator that they will receive calls only from designated people and the operator suspends all other calls (R. 166). The services of this nature are manifold (R. 165).

The telephone company is not permitted under its tariffs to render these services which are rendered by the hotel (R. 59, 209, 210, 129). Its tariff provides

> "14. The Company will not transmit messages * * *. Employees of the Company are forbidden to accept either oral or written messages to be transmitted over the lines of the Company." (R. 230)

To reimburse itself for the cost of the facilities furnished and services rendered to their guests, it has long been the practice in the hotel to make a service charge to their guests. This charge has been ten cents per toll call where the telephone tariff charge is one dollar or less, ten per cent of the telephone tariff charge where such charge is more than one dollar, with a maximum charge of three dollars per call (R. 150).

The guest is also charged the regular tariff rate which the hotel pays to the telephone company for the toll call (R. 60).

The telephone company has nothing whatever to do with the charges made by the hotel to its guests (R. 131). It looks to the hotel to pay the telephone bill based on the tariff charges, and knows nothing of what the hotel may collect (R. 120). The telephone company gets no part of the charge collected by the hotel from its guests (R. 120).

The Proceedings Before the Federal Communications Commission

The tariff provision of the telephone company upon which this action rests was filed following and in supposed compliance with an order made by the Commission in a proceeding conducted by it.

The Commission's report indicates that it was led to its conclusion by its conception of the policy which ought to be reflected in the Act rather than by an analysis of the statute itself. The Commission said:

> "If the collection of such surcharges were not subjected to regulatory control, a subscriber, or anyone else other than the telephone company, who is permitted by the telephone company to control access to the use of a telephone, could freely resell interstate and foreign telephone service, imposing any charges of his own on such use." (R. 26)

The Commission said there were three possibilities as to "responsibility for the surcharge"; either (1) that they are charges of the telephone company on the ground that the hotels are its agent for collection; (2) that the hotels are connecting carriers for hire and themselves subject as carriers to the Communications Act; or (3) that the hotels, as subscribers, receive telephone service "subject to such tariff provisions as may apply" (R. 27, 28). The Commission then found that the hotels "are agents of the respondents" (R. 29, 30), and that any charge for the services rendered by the hotels "must be properly shown in effective tariffs" filed by the telephone company (R. 30). The Commission expressly omitted any finding as to whether the hotels were connecting carriers (R. 30). But notwithstanding its finding that they were agents it found them to be subscribers (R. 30). And it concluded that the tariff of the telephone company which should be filed to show any service charges made by the hotels "may consist of a tariff regulation * * * which contains specific provisions with respect to the conditions upon which telephone service * * * is furnished * * * to hotels * * *." (R. 36)

The Tariff Schedule of the Telephone Company

It should be noted that the Commission's order did not require the telephone company to file a schedule which would attempt to prevent the hotels from making any charge whatever for their services but simply required it to file a schedule stating what service charge would be permitted.

However, on January 22, 1944, the Chesapeake and Potomac Telephone Company filed a tariff with the Federal Communications Commission, purporting to become effective February 15, 1944, which contained the following provision:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff." (R. 62, 63)

The Institution of This Suit

Not only had the Commission's order not required the telephone company to file a schedule designed to bar any service charge by the hotels, but the Commission in its proceeding had made no investigation whatever of the services of the hotels or of the costs incurred by them for which their service charges were made.

Nevertheless, the ink was hardly dry on the telephone company's new schedule when the Commission, through the Attorney General, instituted this suit to enforce compliance with the schedule and to enjoin the hotels from making their service charges.

Not only this but the Commission asked that a temporary restraining order be issued forthwith, at once restraining the hotels from making their charges upon which for many years they had relied to reimburse themselves for the substantial expenses incurred by them. As has been said, this

temporary restraining order was denied and the case proceeded to trial on the merits.

The Decision of the District Court

The District Judge concluded that

> "from the facts in this case it appears that the telephone companies are not violating the tariff schedules at all, and therefore there is no remedy that should be granted at this time against the telephone companies for any acts of their own." (R. 54)

The Commission had based its decision upon its finding that the hotels were the agents of the telephone company and for this reason had ruled that they should make no service charges, except as provided for in schedules of the telephone company.

The District Court, however, overruled this conclusion and expressly found that the hotels were not agents of the telephone company (R. 63). The District Judge correctly said that the evidence

> "fails to show that these hotels are the agents of the telephone company. There was no written agreement to that effect introduced here; there was no oral agreement to that effect introduced here; and there is no testimony, written or oral, from which this Court could imply the existence of any agency in the hotels on behalf of or as agent of the telephone company." (R. 52)

Judge O'Donoghue ruled that "the hotels are subscribers." (R. 52)

There is nothing in the statute that requires that the charges of subscribers for their services and expenses must be specified in or are to be controlled by tariffs of the telephone company. The District Judge, however, argued that if a hotel as a subscriber

> "undertakes, when the messages are going through, to render services to the guests, and then undertakes to

surcharge and make the charge go above, in amount, the tariff schedule, that would be doing indirectly what the telephone company is not allowed to do, and what the law, by its express and implied terms * * * did not mean to allow." (R. 53)

Since, as we shall argue more fully hereafter, Section 203 prohibits only carriers from collecting charges otherwise than strictly in accordance with their tariff schedules, and the District Court found that the "telephone companies are not violating the tariff schedules", it would seem to follow inevitably that there was and could be no violation of Section 203 at all, and that the action should have been dismissed.

Nevertheless, on the ground that "the hotels know what they are doing" and despite the fact that they are not carriers or agents of the telephone company, that the tariff is not theirs and that the statute contains no words or prohibition directed to subscribers, the District Court concluded that

> "they (the hotels) are violating this tariff schedule of the Federal Communications Commission, they are violating the law, and violating the rules of the Federal Communications Commission, and should be enjoined accordingly." (R. 55)

In the conclusions of law the District Court stated the matter thus (R. 66):

> "9. The collection by defendant hotel companies from users of interstate and foreign message toll telephone service of an extra charge, or surcharge, in addition to the regular tariff charges specified in the effective and applicable tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the Federal tax on such service, is contrary to the above tariff regulation. The collection by defendant hotel companies of any such surcharge is therefore illegal and should be enjoined. The defendant telephone companies are not violating said

tariff regulation by any act or omission of their own, and are not responsible for the violations being committed by the hotels."

Other Related Proceedings

The conclusions of law of the District Court refer to e pendency of a three-judge court proceeding (R. 67). lthough not fully set out in the printed record, we think e Court should be informed of this and other proceedgs which are pending.

(1) Upon the issuance by the Commission of its order, rsuant to which the telephone companies filed their tariff hedule, the hotels instituted a suit in the District Court, provided in Section 402 of the Act, to annul the order the ground that it was invalid and based upon errors of w. Because of the bringing of the present action to enrce compliance with the tariff filed pursuant to the order, e hotels' suit has not been brought to trial.

(2) When the tariff schedule was filed by the telephone mpany, the American Hotel Association, on behalf of s members, including the hotels here, petitioned the Comission to enter into an investigation of its reasonableess and legality and to suspend its operation pending ch investigation, as the Commission had power to do nder Section 204 of the Act. This the Commission deined to do. Thereupon the American Hotel Association ed a formal complaint with the Commission alleging that e new provision in the tariff schedule was unreasonable, scriminatory and unlawful and asking an investigation, t at the same time asserting that the tariff was illegal ecause it purported to regulate charges of hotels for their rvices which were not within the purview of the Act nor bject to the Commission's jurisdiction. Action on that mplaint has been held in abeyance pending the final desion on the jurisdictional question in this suit.

(3) Two other suits to enforce compliance with similar hedules of the American Telephone & Telegraph Com-

pany and its corresponding local affiliates have been instituted by the United States at the request of the Commission—one in the United States District Court for the Southern District of New York, and the other in the United States District Court for the Northern District of Illinois. The facts in these two other cases, while in large part similar to those present here, differ in certain important respects, notably, that the schedules there involved were not filed in supposed compliance with any order of the Communications Commission and that the legality of the schedules was challenged on the ground that they had not been filed in accordance with the requirements of the Act. In the New York case the District Court has rendered a decision in favor of the Government and an appeal has been taken to this Court. As yet this Court has not noted probable jurisdiction, *Hotel Astor, Inc. et al.* v. *United States of America, et al.*, No. 823. The Illinois case has been argued in the District Court but no decision has as yet been rendered.

Specification of Errors

The appellants intend to urge the following assigned errors (R. 291-298):

1. The Court erred in concluding as a matter of law that,

> "The tariff regulation with respect to interstate and foreign message toll telephone service filed with the Federal Communications Commission by defendant The Chesapeake and Potomac Telephone Company on January 22, 1944, to be effective February 15, 1944, and formally concurred in by defendant American Telephone and Telegraph Company, providing that 'Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company' as set

forth in its tariffs, is a legally effective tariff regulation under the provisions of the Communications Act of 1934, as amended, applicable to interstate and foreign message toll telephone service to or from telephone instruments located on the premises of defendant hotel companies. This tariff regulation is binding both on defendant telephone companies and on each of the defendant hotel companies." (Concl. of Law 8.)

2. The Court erred in concluding as a matter of law that,

"The collection by defendant hotel companies from users of interstate and foreign message toll telephone service of an extra charge, or surcharge, in addition to the regular tariff charges specified in the effective and applicable tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the Federal tax on such service, is contrary to the above tariff regulation. The collection by defendant hotel companies of any such surcharge is therefore illegal and should be enjoined. * * *" (Concl. of Law 9.)

3. The Court erred in concluding as a matter of law that,

"Any questions as to the justness and reasonableness of the above tariff regulation should be first submitted to the Federal Communications Commission for its determination under the Communications Act of 1934, as amended, and any such questions may be properly submitted to a Court, only after a prior determination by that Commission." (Concl. of Law 10.)

4. The Court erred in concluding as a matter of law that,

"A permanent injunction shall issue restraining the defendant hotel companies, and each of them, and all persons acting under the authority or control of each of them, including their officers, agents, and servants, from charging, demanding, collecting, or re-

ceiving any charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of defendant hotel companies, other than the message toll telephone charges set forth in the applicable and effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission, and the applicable Federal taxes." (Concl. of Law 14.)

5. The Court erred in concluding as a matter of law that,

> "The surcharges being collected by defendant hotel companies from users of interstate and foreign message toll telephone service to and from the premises of defendant hotels are charges for and in connection with interstate and foreign telephone toll communication service, within the meaning of the Communications Act of 1934, as amended." (Concl. of Law 6.)

9. The Court erred in finding as a fact that,

> "The effective tariff schedules of defendant telephone companies on file with the Federal Communications Commission for message toll telephone service apply to interstate and foreign message toll telephone service between all stations located on the premises of defendant hotels, including PBX extension stations, and telephone stations located outside the District of Columbia. The tariff schedules of defendant telephone companies on file with the Federal Communications Commission include the following effective provision, which is applicable to all of their interstate and foreign message toll telephone service:
>
> > 'The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones.' " (Finding 8.)

10. The Court erred in failing to find as a fact and to conclude as a matter of law that the tariff schedules of defendant telephone companies on file with the Federal Communications Commission for message toll telephone

service apply only to service beyond the PBX switchboards of the defendant hotel companies.

11. The Court erred in failing to find as a fact that the provision that,

> "The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephone"

applies only to telephone service beyond the PBX switchboards of the defendant hotel companies and should be so interpreted.

12. The Court erred in failing to find as a fact that the additional charges made by the defendant hotels to their guests when such guest makes a toll telephone call are charges for the services described in the 13th finding of fact of the Court, which the defendant hotel companies render or are prepared to render to their guests.

13. The Court erred in finding as a fact that,

> "The surcharges being collected by defendant hotel companies are charges imposed against the users of interstate and foreign message toll telephone service. They are made only when such service is used, and they are a part of the charge made to the users of interstate and foreign message toll telephone service in connection with such use. These surcharges are collected by the defendant hotel companies in connection with interstate and foreign telephone toll communication service." (Finding 23.)

14. The Court erred in holding "that the Federal Communications Commission likewise had jurisdiction of the matter of the tariff schedules and so on", and in failing to hold that the Federal Communications Commission had jurisdiction only to the extent that the tariff schedules were valid. (Tr. P. 348)

15. The Court erred in holding that,

"Any relief along the lines of the tariff schedules that the hotels here may wish, or that the telephone companies here may wish, should be taken up before the Federal Communications Commission." (Tr. P. 348)

16. The Court erred in holding that,

"* * * if someone who has gotten telephone facilities as a subscriber, from the telephone company —and they have gotten those facilities for their own benefit, to accommodate their guests in the hotel— undertakes, when the messages are going through, to render services to the guests, and then undertakes to surcharge and make the charge go above, in amount, the tariff schedule, that would be doing indirectly what the telephone company is not allowed to do, and what the law, by its express and implied terms, and by the regulations of this Commission, and its orders, did not mean to allow." (Tr. P. 353)

17. The Court erred in holding that the defendant hotel companies are,

"* * * violating this tariff schedule of the Federal Communications Commission, they are violating the law, and violating the rules of the Federal Communications Commission, and should be enjoined accordingly." (Tr. P. 356)

18. The Court erred in holding that,

"The Court will grant an injunction restraining the hotels from adding these surcharges to the bills of the guests of the hotels, in addition to the regular charge for the interstate toll charges." (Tr. P. 356)

19. The Court erred in holding that the tariff schedules and the tariff regulation contained therein, filed January 22, 1944, by the Chesapeake and Potomac Telephone Com-

pany, purporting to become effective February 15, 1944, were valid.

20. The Court erred in failing to hold that the tariff schedule and the tariff regulation contained therein filed on January 22, 1944, by the Chesapeake and Potomac Telephone Company, purporting to become effective February 15, 1944, were not valid in so far as they attempt or purport to prevent the defendant hotel companies from making a charge for hotel services rendered.

21. The Court erred in failing to conclude as a matter of law that the tariff schedule upon which this action was based was illegal, invalid and unenforceable in that it represented an attempt of the defendant, the Chesapeake and Potomac Telephone Company, to regulate the charges of the defendant hotel companies to their guests for hotel services, in that it failed to conform to the provisions of Section 203 of the Communications Act of 1934, and in that by it the said telephone company illegally attempted to make the furnishing of telephone service to subscribers conditioned upon the conduct by said subscribers of their own business activities.

22. The Court erred in failing to find as a fact that the PBX switchboards, the extension stations and connecting lines within each hotel constitute self-contained systems for internal communication.

23. The Court erred in failing to find as a fact that the defendant hotel companies specify the equipment they require, that other equipment is available and could be procured were it not for the refusal of the telephone company to make connection with any equipment not rented from it.

24. The Court erred in failing to find as a fact that the telephone company receives no part of the service charges made by the defendant hotel companies.

25. The Court erred in failing to hold as a matter of law that the provisions of Section 203 of the Communications Act of 1934 imposed no duties and no prohibition upon the defendant hotel companies.

26. The Court erred in finding as a fact and holding that the defendant hotel companies did or could violate the Communications Act of 1934 and in holding that an injunction should issue against them while finding that the Chesapeake and Potomac Telephone Company which was and is a common carrier subject to said Act did not violate the provisions thereof.

27. The Court erred in holding that the charges made by the defendant hotel companies to their guests are in violation of the tariff schedule filed January 22, 1944, by the Chesapeake and Potomac Telephone Company, purporting to become effective February 15, 1944.

28. The Court erred in entering its order of June 8, 1944, enjoining and restraining the defendant hotel companies and each of them from charging, demanding, collecting or receiving any charge for and in connection with any interstate or foreign message toll telephone service to or from the premises of the defendant hotel companies other than the message toll telephone charges set forth in the applicable and effective tariff schedules of the defendant telephone companies on file with the Federal Communications Commission and the applicable Federal taxes.

29. The Court erred in failing to dismiss the suit and in denying the motion of defendant hotel companies for such dismissal.

Summary of Argument.

POINT I. The only tariff schedules for enforcement of which an action may be maintained under Section 401 of the Communications Act of 1934 are schedules required to be filed by Section 203 of that act. Such schedules are limited to schedules specifying the charges collected and received by common carriers for wire communication service furnished by them and regulations affecting such charges. The requirements and prohibitions of Section 203 are addressed only to carriers. Schedules attempting to specify or regulate the charges of others than carriers or the charges of carriers or others for services other than wire communication gain no binding effect by being filed with the Commission and may not be enforced in an action under Section 401.

POINT II. There is no basis under the Communications Act of 1934 for this suit since the tariff schedule sought to be enforced, as interpreted by the lower court, is not a schedule required or permitted by Section 203 to be filed or enforced thereunder in that it does not specify or affect the charges of the telephone company but attempts to specify or regulate the charges of the hotels, which are not carriers, for their services which are not communication under the Act.

The argument under this and following points proceeds on the assumption that the schedule is to be construed as prohibiting the hotels from collecting their service charges from their guests. The schedule does not in any way specify or affect the telephone company's own charges collected or received by it.

The hotels' service charges are collected by the hotels and retained by them. The hotels are not agents of the telephone company and therefore their collection of the charges is not to be deemed collection by or for the telephone company. The hotels' service charges could therefore be charges collected by carriers only if the hotels were themselves carriers or connecting carriers of the telephone company, and their charges were for communication service.

The hotels are not carriers under the Communications Act since they do not offer communication service as common carriers to the general public. Their services are provided only for their guests. Neither the Commission nor the lower court found the hotels to be carriers. The lower court found that they were subscribers. Even if the hotels were connecting carriers, the schedule would not be enforceable against them because it purports to specify charges made by them without their consent or concurrence.

Moreover, the charges of the hotels are not charges for communication service subject to the Act. The hotels' services are essentially secretarial services which the telephone company expressly declines to furnish as communication services.

The manner in which the hotels arrive at their service charges and their method of billing do not bring the charges within Section 203. The fact that the hotels, in the exercise of their discretion in the conduct of their hotel business, collect their charges from guests who make toll calls from their rooms and base the amounts of their charges on the amounts of the telephone company's charges does not convert the hotels' services into communication services or cause their charges to be charges for such services by a common carrier. The situation is similar to that where hotels procure railroad tickets for guests and make a service charge based upon the price of the tickets. The hotels do not thereby become railroads and their service charges are not charges for railroad transportation.

POINT III. The telephone company's schedule as interpreted by the court below cannot be defended and enforced under Section 203 on the ground that it is a regulation of its service.

It is not a regulation to be enforced under Section 203 since it does not affect the charges collected or received by the telephone company.

It is an invalid regulation in that it does not protect any real interest of the telephone company but attempts

to control the charges made by the hotels as customers for their own services. Such lawful regulations or conditions as a carrier may attach to the rendering of its service are limited to those which are reasonably necessary to safeguard its equipment and prevent abuse of its services and facilities. A schedule cannot be defended as a proper regulation, which, like the one here involved, does not in any way affect or protect any interest of the telephone company but attempts to control the business of subscribers. The services of the hotels for which they make their charges are not in any sense services rendered by the telephone company.

The schedule is invalid as a regulation of the conditions on which the telephone company provides service in that it amounts to a denial of the obligations of the telephone company as a common carrier. This is so because a common carrier is obligated to serve all who call upon it and are ready and willing to pay its customary reasonable charges, and a common carrier may not deny its service to a patron because of what the patron does in the conduct of its own business. For these reasons, the schedule is unenforceable and prior recourse to the Commission is not necessary.

POINT IV. The fact that the lower court considered that it was contrary to the public policy for the hotels to make service charges does not bring them within the provisions of the statute.

POINT V. The enforcement of the schedule as interpreted by the Commission and the lower court would take the property of the hotels without just compensation in violation of the Fifth Amendment, since it assumes that they will render their services, which involve expense to them, but would prevent them from obtaining compensation therefor.

POINT VI. The schedule is open to the construction that it prohibits only the making of additional charges for the telephone company's service. Since the hotels do not do

this but charge their guests the telephone company's rates, there is no violation of the schedule as so construed and the suit should be dismissed.

POINT VII. Since the prohibitions of the statute run only to carriers and since the lower court found that the telephone company was not violating the act and should not be enjoined, there was no violation at all and it was error to issue an injunction against the hotels. Section 411(a), while permitting the joinder of interested parties other than carriers, does not permit a decree against the former except to the extent that a decree is entered against the carriers.

POINT VIII. This case is distinguishable from the decisions relied upon by the Commission. Such decisions rested upon findings that the hotels were agents of the telephone company and upon tariff schedules expressly so providing.

CONCLUSION. There are three possible conceptions of the relationship which might exist between the hotels and the telephone company: that of agent and principal, that of connecting carriers, and that of subscriber and carrier. The lower court found that the hotels were not agents and no review of this finding has been sought. It is amply supported by the evidence. Neither the lower court nor the Commission found that the hotels were connecting carriers. The lower court found that the hotels were subscribers to the telephone company's service. The schedule attempts to specify or regulate the charges to be made by the hotels. There is no provision in the statute authorizing a schedule of a carrier attempting to regulate the charges of a subscriber for its services in its own business. The schedule here does not in any way affect the charges collected or received by the telephone company. Therefore, the schedule is not enforceable under Section 203 and the suit should be dismissed.

ARGUMENT

POINT I

The only tariff schedules for enforcement of which an action may be maintained under Section 401 of the Communications Act of 1934 are schedules required to be filed by Section 203. Such schedules are limited to schedules specifying the charges collected and received by common carriers for wire communication service furnished by them and regulations affecting such charges, and do not include schedules specifying or regulating the charges of customers or others for their services. The requirements and prohibitions of Section 203 are addressed only to carriers.

This is a statutory action. The right to maintain it does not derive from general principles of the common law or of public policy. Unless the facts establish a case within the four corners of the Communications Act there has been no violation and the decree was error. This is so whatever reasons of public policy may be thought to exist for a statute which would bring the service charges of the hotels within the application of the Act and the jurisdiction of the Commission. It is essential, therefore, as a preliminary to a discussion of the case, to examine the statute with some care to see just what it does and what it does not provide.

The complaint alleges that Section 203 has been violated. The text of Section 203 is set out in full in the Appendix. The provisions pertinent here are paragraphs (a), (c) and (e), which are as follows:

> "(a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission

and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

"(c) No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

"(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25

for each and every day of the continuance of such offense."

The two most important paragraphs of this section for present purposes are (a) and (c).

A. As to Paragraph (a) of Section 203

The first important point with regard to paragraph (a) is that its prohibitions are addressed only to common carriers. It is "*every common carrier*" which is required to file schedules.

In the second place, the only schedules which "every common carrier" is required to file are schedules "showing all charges *for itself* and *its connecting carriers for* interstate and foreign *wire* * * * *communication* * * * and showing the classifications, practices, and regulations *affecting such charges.*" This does not mean the charges of or for its subscribers. Nor does it mean charges for goods or services other than "wire communication."

It must follow that schedules, although filed with the Commission, which attempt to specify the charges of others than carriers or charges for goods or services other than "wire communication" are not schedules required by paragraph (a) to be filed or required by paragraph (c) to be strictly observed; they gain no sanctity or enforceability by being filed with the Commission. Whatever their effect may be as the basis of a contract or otherwise, failure to observe them is not a violation of Section 203 to be enjoined in an action under the provisions of the Communications Act.

As to "regulations", the language of paragraph (a) makes it clear that it is only "*regulations affecting such charges*" which may be shown in schedules filed with the Commission and enforceable under the Act. A carrier may have various regulations for a violation of which it may or may not have means of redress but if the regulations do not "affect" the charges of a carrier for wire communication, a breach of them is not unlawful under Section 203.

These conclusions find support in the administration of the Interstate Commerce Act, upon whose provisions the parts of the Communications Act here discussed were obviously modeled.

Thus, even where a carrier's tariff names charges to be collected by the carrier itself, if such charges are for services other than transportation, the Interstate Commerce Commission has held that the tariff should not be filed and is not enforceable by it under the Interstate Commerce Act. For example, in *Thompson* v. *Chicago, B. & Q. R. Co.*, 157 I. C. C. 775, the Commission ruled that the feeding of livestock in transit, although done by the carrier, "was not a service of transportation within the meaning of the act" and therefore the Commission could not entertain a complaint alleging the collection of excessive feeding charges under a filed tariff. The Commission said (p. 778):

> "The fact that the charges are published in a tariff on file with this Commission can not confer jurisdiction upon us where it has not been granted by Act of Congress."

To the same effect was the decision of the Interstate Commerce Commission in *Albany Packing Co., Inc.* v. *Atchison, T. & S. F. Ry. Co.*, 245 I. C. C. 741, 744.

Much less are the provisions of a tariff enforceable by the Interstate Commerce Commission when they purport to fix the compensation to be collected by a party not a carrier, for services related to, but not themselves constituting transportation. Accordingly, in *Reciprocal Switching at Detroit*, 215 I. C. C. 284, the Commission held that a charge made by one, not a carrier, for the expense of labor in loading freight on cars, although a necessary preliminary to rail transportation, should not be specified in a tariff schedule filed with it, and was not a matter subject to the Interstate Commerce Act and the Commission's jurisdiction. The analogy to the present case is plain.

In *Refrigerator Car Mileage Allowances*, 232 I. C. C. 276, the Interstate Commerce Commission ordered stricken from its files a tariff schedule purporting to specify the charges that would be paid to private car lines, not owned by shippers, for the use of their cars, on the ground that although the cars were used for transportation, the tariff schedule did not relate to charges paid by shippers to carriers for railroad transportation.

B. **As to Paragraph (c) of Section 203**

It is plain that paragraph (c) in prohibiting a carrier from charging "a greater, less or different compensation * * * than the charges specified in the schedule then in effect" and from extending any privileges or facilities "except as specified in such schedule" has reference to the schedules required by paragraph (a) to be filed with the Commission. It is only if a schedule is such a one as to come within the mandate of paragraph (a) that departure therefrom can be a violation of paragraph (c).

The next feature of paragraph (c) which is important for the present case is that its prohibition of charging and collecting different compensation from the charges specified in a filed schedule, is addressed only to carriers. The words are "*No carrier*". By Section 153(h) the terms "common carrier" or "carrier" are defined as meaning "any person engaged as common carrier for hire, in interstate or foreign communication by wire". It is only such a person who violates Section 203(c) by collecting charges not specified in a tariff filed in accordance with paragraph (a).

It is significant that in connection with wire communication, Congress has not seen fit to extend the prohibition against departing from filed schedules to customers of carriers and others than carriers themselves, as it did with respect to railroad transportation by the Elkins Act (32 Stat. L. 847, U. S. C. Title 49, Secs. 41-43).

In the interest of a complete analysis, it should be remarked that while paragraph (a) of Section 203 refers to

"schedules showing all charges * * * for interstate and foreign wire * * * communication", paragraph (c) uses the words "compensation for such communication, or for any service in connection therewith". It is nevertheless clear that this means compensation which the "*carrier* shall * * * charge, demand, collect, or receive" and does not have reference to compensation charged, demanded, collected, or received by someone else, such as a subscriber. Moreover, the fact that it is only a carrier which is made subject to the prohibition of paragraph (c) together with the general context indicates that the phrase "for any service in connection therewith" has reference to the words "practices * * * affecting such charges" in paragraph (a). Obviously, "such charges" are the charges of a common carrier "for itself and its connecting carriers".

The point here urged is emphasized by examining the provisions relating to penalties for violations. Under the Elkins Act, shippers and others than carriers are made subject to penalties for acts which result in the payment by shippers of charges at variance with those specified in filed tariffs of the carriers. Under Section 10 of the Interstate Commerce Act itself, persons other than carriers may in certain circumstances become subject to criminal penalties for acts which result in transportation being performed "at less than the regular rates then established". But in the Communications Act the only penalty provision pertinent here is paragraph (e) of Section 203, and this is applicable only to carriers.

It is recognized, of course, that Section 411(a) provides that

> "In any proceeding for the enforcement of the provisions of this chapter * * * it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration. * * *"

It is under this provision that the hotels were named as defendants in the complaint (Complaint, paragraph 4, R. 3). But this does not mean that any "persons interested in or

affected by the charge'' can themselves violate the Act independently of the carrier, or that they can be brought in otherwise than in aid of a proceeding involving a violation by a carrier of some provision of the Act.

This is confirmed by the remainder of Section 411(a) which provides that

> "decrees may be made with reference to and against such additional parties in the same manner, *to the same extent*, and subject to the same provisions as are or shall be authorized by law with respect to carriers."

Plainly under this provision, if no decree is warranted against a carrier then there can be none against "such additional parties".

It remains to review the circumstances here in the light of this analysis of the pertinent provisions of the Act.

POINT II

There is no basis under the Communications Act of 1934 for this suit, since the tariff schedule sought to be enforced, as construed by the Commission and the court below, is not a schedule required or permitted by Section 203 to be filed and enforced thereunder, in that it does not specify or affect the charges of the telephone company, but attempts to specify or regulate the charges of the hotels which are not carriers for their services which are not communication under the Act.

For convenience, we repeat the tariff provision of the telephone company to enforce which this suit has been brought. It reads as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition

that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

A statement that no charge shall be made is as much a specification of the amount of a charge as if a figure had been named, or else it is a regulation affecting a charge. As we shall argue under a later point, it is open to doubt whether the telephone company's schedule is properly to be construed as attempting to specify that as a condition of receiving toll telephone service for its own use and to place at the disposal of its guests, a hotel must forego making any charge whatever to its guests to reimburse or compensate itself for the expense it incurs and the service which it renders over and above the service of the telephone company in enabling its guests to make and receive toll calls in their rooms and elsewhere. However, whether or not the schedule should be so construed, this is the way it has been sought to be enforced in this suit. Therefore, except for the argument under Point VI we shall assume that the schedule, if valid and operative, would have this effect.

A. The schedule is unenforceable under Section 203 since it does not specify or affect the charges collected by the telephone company, but attempts to specify the charges of the hotels which are not carriers or connecting carriers but subscribers.

The tariff schedule does not attempt in any way to affect what the telephone company's own charges shall be or what it shall receive for its communication service. It receives its published toll charges and would continue to do so under this schedule. No part of the service charges collected by the hotels is in fact remitted to the telephone company. And since it has been correctly found by the court below that the hotels are not the agents of the telephone company in collecting the service charges, and no error has been alleged in this finding, it cannot be claimed

that on some principle of agency the hotels collect the service charges for the telephone company.

In short, this schedule is not a schedule of the telephone company specifying charges *"for itself"*. It attempts to specify what the charges of the hotels shall be for themselves.

If the hotels were "connecting carriers" within the meaning of the Act, the schedule might come within the terms of Section 203 in so far as this phase of the matter goes, as a schedule of the telephone company "showing all charges for * * * its connecting carriers."

The lower court, however, did not find that the hotels were "connecting carriers", nor base its conclusion upon any such assumption. On the contrary it found definitely that the hotels were "subscribers" (R. 52). Neither did the Commission find the hotels to be connecting carriers, but instead it expressly stated that it made no such finding (R. 30).

It is plain, moreover, that the hotels are not connecting carriers within the language and intent of the Act. To be a "connecting" carrier one must first be a "carrier". A carrier is defined in Section 153(h) of the Act (47 U. S. C. 153(h)), which provides:

> "'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, in so far as such person is so engaged, be deemed a common carrier."

Leaving until later the question whether the services for which the hotels make their charges are "communication by wire", they are not engaged in furnishing these services as "a common carrier".

A common carrier is one who offers his services to the general public and is bound to make those services available to anyone seeking them and willing to pay the

carrier's customary and reasonable charges therefor. *Michigan Public Utilities Commission* v. *Duke*, 266 U. S. 570 (1924); *Matter of Motor Haulage Company* v. *Maltbie*, 293 N. Y. 338 (1944).

The fact that the hotels are themselves engaged in a public calling must not be allowed to cause confusion on this point since the undertakings of the hotels in their field are quite distinct from the public undertaking which makes one a common carrier under the Communications Act. For the purposes of this Act, the test is whether "wire communication" is offered to the general public, and must be supplied on paying only the charges for wire communication. The hotels do not offer to the general public the privilege of telephoning from or receiving telephone calls in hotel rooms. They do not offer to page any and every one, to take messages for anybody, to pay the telephone company's charges for toll calls for anyone that asks for it and to assume the risk of collecting later. These are services which the hotels make available only to their guests. Before a man may use a telephone in a hotel room he must have been accepted as and have become a "guest" of the hotel. This involves registration, becoming liable for the hotel charges for the room, agreeing to the hotel's regulations, etc. The hotels are not common carriers of telephone service.

It follows that the hotels are not "connecting carriers" and that the telephone company's schedule, in attempting to specify what the charges of the hotels shall be, is not a schedule showing charges either "for itself" or "for * * * its connecting carriers".

Hence on this ground alone the schedule is not one within the terms of Section 203 and is not enforceable in a suit under Section 401(c).

In support of this conclusion, we refer again to the decisions cited under the previous point wherein it was held that tariffs purporting to fix charges to be paid to persons who are not carriers are not properly filed with the Interstate Commerce Commission and are not en-

forceable under the Interstate Commerce Act, *Swift & Co. v. United States*, 316 U. S. 216 (1942)—charges of a stockyards company. *Reciprocal Switching at Detroit*, 215 I. C. C. 284—charges of a carloading concern; *Refrigerator Car Mileage Allowances*, 232 I. C. C. 276—charges of non-carrier private car companies.

B. Even if the hotels were "connecting carriers" the schedule would be unenforceable against them as an attempt to specify their charges without their consent or agreement.

Even if the hotels were carriers and could, therefore, be considered "connecting carriers" of the telephone company, it is obvious that they could not be bound by a schedule filed by the telephone company purporting to cover their services unless they had concurred in or agreed to such schedule. Section 203(a) provides for schedules for communication between points on a carrier's system and "points on the system of its connecting carriers" only "when a through route has been established", which necessarily implies agreement between the carriers. This contention is fully supported by decisions under the Interstate Commerce Act. In *Wheelock* v. *Walsh Fire Clay Products Company*, 60 F. (2d) 415, the Circuit Court of Appeals for the Eighth Circuit held that "the initial carrier did not have it within its power by making its own tariff subject to the formula provided in the Jones Tariff, to modify or amend the applicable tariffs of the connecting carriers, nor to force upon them rates named in tariffs to which they were not parties". To the same effect are *New York, New Haven & Hartford R. R. Co.* v. *Platt*; 7 I. C. C. 323; *Hull Co.* v. *Southern Railway Co.*, 24 I. C. C. 302.

In the present case the telephone company has by *ex parte* action attempted by its schedule to eliminate charges for services made by the hotels. But the hotels have not agreed to or concurred in the schedule. The schedule is, therefore, unenforceable against them.

C. The schedule is unenforceable under Section 203 since it attempts to specify or regulate the charges for services which are not wire communication by a carrier subject to the Act.

As we showed in the general discussion of the law under the first main point, schedules attempting to specify charges for services other than communication or transportation, even if they are charges of a carrier, are not properly filed with the Commission under Section 203 and such schedules are not enforceable under the Act. *Thompson* v. *Chicago, B. & Q. R. Co.*, 157 I. C. C. 775—charges for feeding livestock; *Southern Pacific Co.* v. *United States*, 272 U. S. 445 (1926)—charges not for common carrier service to the public but for special transportation for the government. And a provision not affecting charges for common carrier service does not become binding because published in a tariff schedule. *Pacific S. S. Co.* v. *Cackette*, 8 F. (2d) 259 (C. C. A. 9th, 1925)—limitation of time for filing claim.

The services for which the hotels make their charges are in no sense "wire communication" within the contemplation of the statute, but are essentially hotel services to hotel guests.

A hotel is not engaged in railroad transportation because its porter will buy tickets and make reservations for guests. It does not operate a theatre because it will procure theatre tickets. Nor does it engage in wire communication because its operators will look up numbers and place calls with the telephone company.

A hotel's services have been described as generally "secretarial" in character (R. 165). Witness Moore testified as follows regarding the services for which the hotels make their charges and the reasons therefor (R. 164-165):

> "Q. Will you state the secretarial services rendered by the employees of the hotel?
>
> A. Well, we will start with the guest going to his room and wanting to use the telephone for a long distance call. He can pick up the instrument and ask the operator to place a call for him to a city like New York

or Chicago, such-and-such a number, and call such-and-such a person. If he doesn't request it, he put through to the telephone operator, the toll telephone operator in the telephone company, our operator staying on the line to see that the call is properly handled and that the proper room number is (fol. 397) given, and she stays on the line until that call has started.

After the call is disconnected, she gets from the telephone company the proper charges, the name of the parties called and calling, and the time and the amount of the call, and the tax, and the service charge is added. And that is charged to the account.

If a guest wishes, and the majority of them do, that whole transaction is carried on by our telephone operator at the switchboard, and the guest merely calls and says, 'Get me Mr. Jones at such-and-such a number in New York'. She handles the call and he can go about shaving or getting dressed or having his breakfast, or what-not, and when that call is ready she rings the room phone and says, 'We are ready with New York'.

The other services that we render would go into almost the same category as those of a large office, where you have a number of offices and a central switchboard, and that operator being employed for that suite of offices. We have to take as many office messages as this man was getting back home. If he goes downtown, he calls back to the hotel and leaves messages that he is going to be met, or wants to meet somebody at a certain place, if they call in. And it just goes on all day until our switchboard is loaded with messages; and for that reason, in addition to operators, we have to keep a chief operator and supervisors (fol. 398) to handle these messages, which is, in our opinion, secretarial service. We think that our telephone switchboard is rendering more secretarial service than the average office renders in any place in the city.

I can give you a quick example. A man will try and try to get an office on the telephone downtown, and he can't make it, he has an appointment and has to leave, and we carry the call out, and when we can get it we tell them he is on his way.

The same is true with a long distance call. He tries to get his home office and can't reach it, and has an appointment with one of the Government departments, and leaves word with the operator to call them and give them a message, and she repeats that message to the home office.

So all day long our operators are performing the work that an operator would do in a large office or Government department.

Q. Do the operators receive messages for the guests and transmit them to the guests?

A. Yes, we receive and write down, and put into the mail box, messages for guests. We ask the question, 'Do you wish to leave a message?' If they say 'Yes', we write it down and put it in the mail box. Those messages, of course, are in a great number of cases of great importance, and the party must be reached. It sometimes is a matter (fol. 399) of dollars and cents, and also health, and messages from home, and so forth. Long distance calls come in while a man is busy in one of the departments, and we have to handle that message and see that he gets it when he gets home.

It is one of the most important things that the telephone department does, to see that those messages are properly written and are handed to the guest or reach the guest.

Q. If the guest happens to have left his room, either to go to some other part of the hotel—the dining room or barber shop or some other branch of the hotel—or outside of the hotel, does the employee of the hotel undertake to locate the guest and transmit the call to him?

A. Yes, that happens so often, now more than ever before because of the busy circuits. A man will place a long distance call and can't wait for it, he is going to the barber shop or going to have breakfast, and leaves word he will be in the dining room or in the barber shop, and there again the message is put up on the switchboard, and as soon as that call is completed he is sent for, paged or called to the telephone, and it is reported to him that his call is ready.

Q. And that applies also if they have left the hotel and gone to some other part of the city?

A. Yes. In the telephone department we get these calls up to that switchboard, and from that switchboard on we have to go to work and do all of this extra work to reach (fol. 400) parties making calls, and so forth. It really becomes quite a task, and one that we can be seriously involved in if we do not do it right. The matter of responsibility is there in the handling of messages, and so forth, and we have to have competent people in that department to handle them.

If I could just go back to the statement again about the charge in the accounting end of it, that is one reason that we set this up originally, and why hotels have always set it up, that the people that are using the telephone the most are those that demand the most service on this incoming and this secretarial service. So out of fairness, we have always placed the charge against those people."

To be sure, all of these things are related to the making and receiving of telephone calls by guests, but to hold that they constitute "wire communication" would mean that any business concern with a PBX board and with operators and secretaries that place and receive calls and make connections with the trunk lines of a telephone company is engaged in wire communication within the meaning of the Act. Obviously this is not the intention of the Act. The evidence here shows that monthly charges made to the hotels for equipment are the same as made to other subscribers having PBX boards, such as department stores, government departments, law offices, newspapers, courts—"any business subscriber that is of substantial size and has a lot of employees would have a private branch exchange". (R. 108) In each of those instances the board is operated by an employee or employees of the subscriber, not of the telephone company; the subscriber has complete control of the board, the number of extensions, and the number of employees, and connection is made with the telephone company only when the operator plugs into the line of the

telephone company from the PBX board. It is inconceivable that what all such firms, business houses and courts do is within the term "wire communication" by a carrier for the purposes of the Act. Their telephone equipment is an adjunct of their regular business. So, too, hotels do not make the furnishing of wire communication their business. They are innkeepers. Telephones in their rooms are hotel accommodations, like electric light and hot water, which in these days guests expect.

As a final answer to any suggestion that the services for which the hotels make their service charges constitute wire communication subject to the Act, we return to the point previously urged, that the hotels are not themselves carriers subject to the Act. For it is only wire communication by common carriers to which the Act applies and for which charges are to be specified in schedules filed with the Commission under Section 203.

Nor can the services of the hotels be said to constitute wire communication by the telephone company; since (a) it is the hotels which perform the services and they have been expressly found not to be agents of the telephone company; and, (b) the services are essentially secretarial services which the telephone company will not perform and by its schedules has expressly refused to perform (R. 128, 230).

Sight must not be lost of the fact that this same equipment is used for internal communication within the hotel as for outside calls and such internal communication is obviously not conducted by the telephone company nor is the hotel in providing the service a common carrier subject to the Act, *Chesapeake & Potomac Tel. Co.* v. *Manning*, 183 U. S. 238 (1901).

We do not overlook the provision which the telephone company inserted in its schedule reading (R. 59):

> "The toll service charges specified in this tariff are in payment for all services furnished between the calling and the called telephones."

But this cannot mean that the telephone company thereby extended its services to the instruments in the rooms

of hotels. For the telephone company could not reach the hotel rooms without the consent of the hotels. If this clause were interpreted as an undertaking by the telephone company to hotel guests to accept calls from or transmit calls to hotel rooms it would be an undertaking without power of fulfillment, since without the intervention of the hotels' employees and without the hotels' consent the calls could not be put through. Only if the hotels were agents of the telephone company could it be claimed that through their agency the telephone company could provide service to and from hotel rooms. But such agency is denied by the telephone company (R. 202), is disproved by the evidence and was found by the lower court not to exist (R. 52).

It is possible to conceive of a situation where a hotel for a rental or other consideration might allow the telephone company to come upon its premises, install such instruments in hotel rooms as it might desire, install wires to these instruments, put in a PBX board, and with its own operators operate the board, make connections, look up numbers, place calls and bill the guests directly for any calls made by them. In this event it might well be that the entire service from a telephone in a guest's room would be wire communication service by a common carrier (the telephone company) subject to the Communications Act and that the carrier's schedule might, and indeed should, specify the charges for all of the services rendered to the guests. This is in effect what does take place with regard to the coin telephones in hotel lobbies, which are placed there by the telephone company and operated by it and from which collection of charges is made directly by the telephone company, the telephone company paying the hotels rental for the space (R. 162).

There is reason to believe that some of the thinking on this subject, which is reflected in the decisions cited by the Communications Commission in its report (R. 27) and which are discussed in Point VIII hereafter, stems from an impression that such is the actual situation. For one of the earliest pronouncements on the subject of the relation of hotels to telephone services was an informal opinion

of the Public Service Commission of New York in 1920, in which the Public Service Commission asserted its jurisdiction over all charges for telephone service to and from hotel rooms in the following language:

> "If the proprietor of a hotel permits a public utility company to install its system upon the hotel property to reach telephone users in the hotel lobby and in guest rooms, a fair agreement should be made for such use of the premises, but the permission to use such hotel premises to install a telephone system does not change the nature of the service. It remains public service, subject to regulation, and such permission cannot transmute a hotel company into a public telephone corporation possessing the functions of such a corporation but free from its duties." (Op. Public Service Commission, 1920, 22 St. Dept. Rep. 540.)

While it is possible to conceive of such a situation, the evidence and findings are conclusive that it does not exist here. The hotels here do not permit the telephone company to come into their premises, install telephones in such rooms as the telephone company may elect, establish a PBX board and operate it with telephone company employees. On the contrary, it is the hotel which has the telephone instruments installed, decides how many it wants and in what rooms, pays for them, pays for the PBX board, employs and directs the operators on the board and all supervisors and others required for services within the hotel. The telephone company does not bill the guests but bills the hotel. There is no contract relationship between the telephone company and any hotel guests in so far as the circumstances here involved are concerned. This case, therefore, cannot be decided on the basis of any conception such as that here discussed and reflected in the informal opinion of the New York State Public Service Commission.

Rather, the situation here is analogous to that dealt with in *Warehouse Co.* v. *United States*, 283 U. S. 501 (1930), where it appeared that concerns engaged in the warehouse business performed various services in loading freight into

railroad cars and in making delivery of freight to consignees. In the court's opinion written by the present Chief Justice, the findings of the Interstate Commerce Commission and the court below with regard to the services rendered were described in the following language, which is significant, among other things, as bearing upon the claim that the telephone service afforded to guests in hotel rooms is service offered to the public (pp. 505-506):

> "Appellants' warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations, but are confined to the warehousing of merchandise for their patrons. The services which they perform in connection with loading and unloading of freight, including the sending of arrival notices to their patrons after receipt of notice of arrival from the railroad, the collection of freight charges, and other incidental matters, are in fact performed for the owners of the merchandise rather than for the railroads. While the contract warehouses are not owners of goods received or shipped, the dealings of the railroads are with them and not with the owners of the goods; and as to many of the inbound carload shipments, the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to appellants for distribution by them in less than carload lots. The contract warehouses, being given dominion over the merchandise for transportation purposes, are to be deemed consignors of shipments from, and consignees of shipments to, their warehouses."

This court held that these services were services to the shippers as a part of the warehouse company's warehouse business and were not railroad services performed by the warehouse companies as railroads or as agents for the railroads. It therefore held that it was unlawful for the railroads to pay allowances to the warehouse companies out of the railroad rates and that the warehouse companies

must look for compensation to their own charges to their patrons.

Similarly the services of the hotels here are not wire communication by common carriers.

D. The manner in which the hotels arrive at their service charges and their method of billing do not make them charges to be specified in tariffs filed under Section 203.

It is apparent that this suit and the decision of the court below are the consequence of confusion of thought, resulting from the fact that the hotels, in the exercise of their business discretion as hotelmen as to the manner in which they shall bill for their hotel services, seek reimbursement for the expenses which they incur in providing various conveniences and secretarial services to their guests by making a service charge whenever a guest makes a long distance toll call and basing that service charge on the amount of the telephone company charge.

The lower court conceded the right of the hotels to obtain reimbursement for their expenses and compensation for their services. He suggested that they might curtail the services or increase their charges for rooms, food and drink (R. 54). Either of these suggestions supports the point urged here. For if the hotels may eliminate some of their services they are not carrier services subject to the Act, since such services cannot be refused at will. If the hotels may seek compensation in some other manner, this is because they are entitled to compensation in their own right and the customer has not paid them for their services in the rates paid to the telephone company.

However, the form of the charges and the method of billing does not convert the services for which the charges are made into wire communication under the Act.

If the hotels may charge for such services, then it becomes a matter of hotel business as to how they shall compute their charges and what method they shall employ to reimburse themselves. The evidence shows that the hotels have for years followed the practice of obtaining compensa-

tion for these various services by making service charges to guests who make telephone calls from their rooms (R. 159). This has worked satisfactorily. The hotels could, of course, as the lower court suggested, increase their room rates to make themselves whole. But this would result in compelling guests who do not use the telephone facilities and secretarial services to pay for them. To make charges when incoming calls are received, would subject guests to charges when they have no control over the calls and may not desire them. It was testified that the method employed seems reasonably fair and it does not deceive the guest by subjecting him to a hidden charge.

What the hotels do in relation to the telephone facilities and secretarial services which they provide is similar to what they do when a guest calls upon the hotel to arrange railroad transportation for him, so that he is saved the inconvenience of himself going to the ticket office. The hotels charge the guest the railroad fare paid for the ticket at the railroad's tariff rates. But the guest is also charged a service charge for the hotel service which may be based upon the price of the ticket. However, because this charge is made in connection with procuring railroad transportation, the service of the hotel does not become itself railroad transportation or subject to the railroad tariffs and to control by the Interstate Commerce Commission.

Nor are guests confused into thinking that the service charges made by the hotels are charges of the telephone company rather than charges of the hotels since they are shown separately on hotel bills and the telephone vouchers are available to guests (R. 155). There is not a scintilla of evidence that any guest has been misled or has considered that in paying the hotel charges he was paying an additional rate to the telephone company.

Similarly, the fact that the amounts of the service charges are determined in relation to the charges of the telephone company and do not reflect the variations in the extent of the services furnished by the hotels does not make them any less charges for the hotels' services. There are

many examples, such as tips and other service charges, where the amounts are based upon some other charge rather than the quantum of the service rendered in the particular instance.

In any event, whether the method employed by the hotels is wise or fair is a matter of hotel management, and it does not convert the charges into charges for wire communication under the Act.

POINT III

The schedule, as construed by the lower court, cannot be defended and enforced under Section 203 on the ground that it is a regulation of the telephone company's service.

A. It is not a regulation to be enforced under Section 203 since it does not affect the charges collected or received by the telephone company.

It may be agreed for the purposes of this point that a common carrier may attach certain reasonable conditions to the furnishing of its common carrier service. These conditions may affect the terms of the contract between the telephone company and a subscriber. They may be enforced through appropriate procedures, or the telephone company may have a right of action for breach thereof. It does not follow, however, that such regulations, merely because included in a filed tariff, would have binding effect and still less does it follow that departure therefrom would constitute a violation of Section 203, to be enjoined in a suit under the provisions of the Communications Act.

It is clear from the language of the statute that the only regulations to be included in a schedule filed under Section 203 are regulations "affecting such charges", meaning the charges collected and received by a common carrier for its communication service.

The restricted language here, thus limiting what is to be shown in schedules filed and enforceable under Section 203 to "charges for itself and its connecting carriers for interstate and foreign wire * * * communication" and "the classifications, practices, and regulations affecting such charges", is in marked contrast with the language of Section 6 of the Interstate Commerce Act. The latter provides that schedules of common carriers filed with the Interstate Commerce Commission shall not only show "all the rates, fares, and charges for transportation" but shall also

> "contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee."

The use of the words "all privileges or facilities granted or allowed" as well as the language "the value of the service rendered to the passenger, shipper, or consignee" clearly indicate that under the Interstate Commerce Act schedules are to include more than charges and rules, regulations or practices affecting such charges. The absence of such language from the Communications Act plainly indicates that Congress intended that under the latter, schedules enforceable pursuant to Section 203 should deal only with the charges of carriers and with rules, regulations or practices affecting such charges.

As has been previously said, the schedule here does not in any way affect the charges collected or received by the telephone company for its communication service. Therefore, whatever effect such a regulation, if valid, might have in other respects, failure to observe it is not a violation of Section 203 and may not be enjoined in a suit such as this.

B. The schedule is an invalid regulation in that it does not protect any real interest of the telephone company, but attempts to control the charges made by the hotels as customers for their own services.

In certain cases the lawfulness of conditions attached by a carrier to the furnishing of its service may be only a matter of their reasonable character which may be a subject for administrative determination, at least in the first instance. But other conditions may be patently unlawful or may obviously transcend all possible bounds of reasonableness, or they may be wholly inconsistent with a common carrier's obligations, or they may purport to regulate the charges of other persons wholly without the jurisdiction of the regulatory body. Where this is the situation, a court should refuse to enforce the schedule. It is submitted that the telephone company's schedule here falls in the latter category.

It is conceivable that a carrier may by regulations impose conditions on the furnishing and use of its service which would safeguard its equipment from physical damage or would prevent abuse of its service and facilities. On the other hand, it is equally obvious that the telephone company could not lawfully impose conditions upon its offer to serve the hotels which would have no relation to the interests of the telephone company as a carrier but would be merely a device to control its subscriber's business; such as, that a hotel shall not charge more than a certain amount for its rooms; that it shall employ only operators of a certain race or faith or that it shall not serve alcoholic liquors. Where is the dividing line between these two classes of regulations?

It seems clear when these hypothetical regulations are considered that those are permissible which affect the preservation of the carrier's equipment or the maintenance of its standards of operation or prevent abuse of its service. The regulations which seem obviously invalid are those which affect, not the carrier in its business, but only the

ubscriber in its business. This then would seem to be the ppropriate test of validity of regulations in a tariff affect- ng a subscriber. Any other test would enable carriers ot only to control the subscriber's affairs but also to bring nder regulation by the Commission persons not even re- iotely subject to the Act.

Any other test would be almost impossible of reason- ble or consistent application. The use of PBX switch oards is not limited to hotels. They are used in every usiness and law office of any size. They are used in rail- oads, in lighting plants, in industrial plants, in depart- ient stores. The ruling of the Commission and the court elow would permit the Commission to regulate the busi- ess of these organizations on the same theory that it eeks to regulate the business of the hotels, *i. e.*, that the ervice between the PBX board and the extension tele- hone is wire communication. The telephone company ould refuse to provide the service to a company whose rices did not fall within certain limits, to a law office hose charges it considered excessive, to a department tore which sold certain commodities at a loss in order to ttract customers. There would be no valid ground for listinguishing such prohibitions from the prohibition in he tariff under consideration. The line must be drawn omewhere and if it is to afford telephone companies a atisfactory rule for their guidance in drawing their tariffs, egulations must be limited to those which affect the tele- hone companies in their business and not the subscribers n theirs.

Measured by this standard, the condition of the schedule ere involved is clearly invalid. It does not affect the aintenance of the telephone company's service in any espect, it does not affect the telephone company's charges n any respect, it does not prevent any abuse or misuse of ts service. If it be argued that the telephone company s afraid that the service charges may be considered by uests to be part of the long distance toll charge and that hereby guests may gain an impression that the telephone ompany's charges are higher than they actually are, the

answer is that there is not a single word of testimony to that effect. Furthermore, the hotel bills show the hotel's service charges separately, and when a guest pays his bill the slips are at hand showing just what the telephone company's charges are (R. 153).

As a further illustration of this point, let it be supposed that a railroad should publish in its tariff a rate of one dollar per one hundred pounds for transportation from Washington to Chicago, but should insert in its tariff a clause providing that its transportation service would be furnished to a shipper in Washington only on the condition that when he should sell his goods f. o. b. Washington to a buyer in Chicago, the freight being for the buyer's account, he should add nothing to the railroad's rate of one dollar to cover his cost of shipping the goods and of making "the use of the (railroad's) service" available to the buyer. It seems plain that such a tariff provision would be unlawful on its face, as an attempt by the railroad to control the shipper's conduct of his own business and bring it under regulation.

Thus it has been held that a tariff provision of a railroad by which it has attempted to make the measure of its charges dependent upon what a shipper does in his own business with the goods transported is invalid and unenforceable. *In the Matter of Restricted Rates*, 20 I. C. C. 426; *Doran & Company* v. *N. C. & St. L. Ry.*, 33 I. C. C. 523, 531.

If the Interstate Commerce Commission should undertake to enforce a tariff provision such as that in the case supposed, by bringing a suit to enjoin the shipper from billing the Chicago buyer for his cost of packing and loading the freight, paying the railroad and assuming the credit risk, it would plainly be attempting to regulate the business of the shipper and the suit would be dismissed as improper under the Interstate Commerce Act. *Reciprocal Switching at Detroit*, 215 I. C. C. 284.

It is submitted that the present situation is of the same sort. The hotels incur expenses in providing as a part of their hotel accommodations the means, whereby it is

possible for their guests, sitting in their rooms, to make contact through the PBX board with the trunk lines of the telephone company and to transmit wire communications over those lines. These are expenses for which the hotels have not charged in their room rates (R. 159). A guest in a room cannot "ship" a message over a trunk line of the telephone company unless his voice is conducted to the trunk line connection. That is done by the conduits and wires installed at the expense of the hotels and by the labor of the hotels' switchboard operators. They correspond to the overhead carriers or trucks and laborers used by a shipper or by a warehouse company to bring goods to a railroad track and load them into a car.

It is not necessary for the purposes of this proceeding to fix the exact dividing line between the activities of the telephone company and those of the hotels since the hotels incur expenses for some services which could not, on any theory, be claimed to be services performed by or for the telephone company. The precise dividing line would be important only if the amount of the hotels' charges and the rates of the telephone company were in issue. But since the telephone company's schedule would prohibit any charge whatever by the hotels, it is unnecessary to go into this question.

However, if a decision on the point were essential, we submit that the telephone company's service ends at the PBX board, that the operation of the board, which is done by the hotels' employees at the hotels' expense, the establishment of contact between the phones in the guests' rooms and the trunk lines of the telephone company are all acts of the hotels, and that charges therefor do not on any theory come under Section 203.

That the telephone company's service ends at the PBX board is indicated, first, by the fact that it is not the choice of the telephone company that instruments are placed in hotel rooms. This is the election of the hotels themselves. They decide whether there shall be telephone instruments in their rooms; they decide how many instruments they re-

quire; they decide what switchboard facilities they will need and how many trunk lines, and they order these from the telephone company. The telephone company cannot offer communication service from hotel rooms to the public as a common carrier, because neither it nor the public has access to the hotel rooms. Instruments in hotel rooms are available only to guests of the hotel. Furthermore, it is the hotels and not the telephone company which have incurred the expense of making it possible for guests to make telephone calls from their rooms.

It may be suggested that the service between the PBX board and hotel rooms is service performed by the telephone company because its owns the equipment. However, this is the case only because the telephone company, presumably to protect its monopoly, or possibly for service reasons, will not connect with telephone installations acquired from other sources than itself. This case should therefore be treated as though the equipment were owned by the hotels. There is no real reason why the hotels could not buy telephone equipment elsewhere, which they would own, and then make connection between such equipment and the telephone toll lines, and if this were done, the basis for the suggestion that it is the telephone company itself that furnishes the service would disappear. But the mere fact of the telephone company's restrictive regulations does not alter the situation, because it is the hotels who pay for the equipment, it is the hotels who employ the operators to operate it, and, as we have said, it is the hotels that decide what equipment they desire.

And there is, further, the important fact that the instruments and connecting lines within the hotels are used for intra-hotel communication, so that it cannot be said that the fact that they are owned by the telephone company makes their use service by the telephone company. On this point the decision in *Chesapeake & Potomac Tel. Co.* v. *Manning*, 186 U. S. 238 (1901) is pertinent. It there appeared that the telephone company provided instruments and lines for internal communication within buildings. It was held that

his was a private matter and not subject to governmental egulation.

An analogy from the transportation field sheds some ight on the problem here. In a large number of cases, both n the courts and before the Interstate Commerce Commission, it has been held that where an industrial plant has ide tracks and connecting tracks within the plant enclosure, which are used not only for the handling of cars of freight moving outbound or inbound in road haul transportation over the railroads but also for switching cars between buildings within the plant for plant purposes, the racks within the plant are part of the industry and not part of the railroad. It has therefore been held that the railroad service to be covered by its tariff rates ends or begins when a car is placed on an interchange track at the entrance to the plant and does not extend through to the point of loading or unloading within the plant, *N. Y. C. & H. R. R. R. Co.* v. *General Electric*, 219 N. Y. 227 (1916); *U. S.* v. *Am. Tin Plate Co.*, 301 U. S. 402 (1936). In the latter case the court upheld the decision of the Interstate Commerce Commission in *Practices of Carriers Affecting Operating Revenues or Expenses*, 209 I. C. C. 11. The PBX board at a hotel corresponds with the interchange track, and the wires and telephone instruments within a hotel are similar to the tracks within a large industrial plant enclosure, being used for both interior communication and for the handling of inbound and outbound through calls.

Another analogy from the transportation field is afforded by the decision of the Supreme Court in *Swift & Co.* v. *United States*, 316 U. S. 216 (1942). This case involved the delivery of livestock handled by a railroad through stockyards in Chicago. The question involved was as to the jurisdiction of the Interstate Commerce Commission and the application of the Interstate Commerce Act to the services rendered by the stockyards company. It had been held that it was part of the obligation of the railroads in the transportation of livestock to provide facilities for the delivery of the livestock shipments and that stockyard companies employed by the railroads for this purpose were

the agents of the railroads and their services were subject to railroad tariffs. It appeared, however, that after the railroad transportation was ended the stockyards performed other services in unloading the livestock into the stockyards, and for these other services the stockyards made a charge. In a complaint filed with the Interstate Commerce Commission, this charge was attacked as unreasonable. It was alleged, also, that the charge was unlawful and in violation of the railroad tariff because consignees could not secure delivery directly from the railroads when the cars were unloaded except through the medium of the stockyards company. This Court held that the Interstate Commerce Commission had no jurisdiction over the charges of the stockyards company for its services after the livestock reached the unloading pens and that these services were not properly subject to tariffs to be filed with the Interstate Commerce Commission, but were stockyards services subject to the regulation of the Secretary of Agriculture, under the Packers and Stockyards Act. The Court said (p: 282):

> "If the Yard Company is in the dual position of being at once the agent of the carriers for the unloading of the stock and the principal in rendering any subsequent services, so is it under dual regulatory schemes and authorities. In so far as it is an agency in transportation, it is subject to the Interstate Commerce Act and to the control of the Interstate Commerce Commission. In so far as it performs stockyard services, it is subject to the Packers and Stockyards Act and to the regulation of the Secretary of Agriculture. The statutes clearly disclose an intention that jurisdiction of the Secretary of Agriculture over stockyard services shall not overlap that of the Commission over transportation. The boundary between the two is the place where transportation ends, and in this case that is established to be the unloading pens."

Similarly here, telephone service ends at the PBX switchboard. What the hotels do beyond that point is hotel service subject to regulation, if at all, as hotel service

by the authorities having regulatory authority over hotel activities.

C. **The schedule is invalid as a regulation in that it is a denial of the obligation of the telephone company as a common carrier.**

Recalling the hypothetical example given under the previous subheading, of a railroad inserting a clause in its tariff to the effect that it would furnish transportation to a shipper in Washington only on the condition that in selling his wares f. o. b. to a Chicago buyer he should add nothing to the railroad's rate to cover his cost of shipping and of making the railroad's service available to the Chicago customer, it would appear that such a regulation would be invalid not only as an attempt to control the shipper's business but also because it would be a negation of the railroad's common carrier obligation.

It is the essence of a common carrier's calling that it is obligated to serve without discrimination all who seek its services and are ready and willing to pay its customary reasonable charges. It cannot make the granting or withholding of its service dependent upon how its patron conducts his own business or upon the terms on which the patron sells his wares. A private industry may, within limits, make any conditions it desires for the sale of its goods or services. It may refuse to sell unless its buyer agrees to certain terms with regard to resale. But a common carrier may not make the furnishing of its service conditional upon such considerations.

Hence, the schedule here is invalid if the telephone company is, as it is deemed to be, a common carrier. If such a condition could be enforced, it would be because the telephone company was not a common carrier, in which event, of course, this action under the Communications Act would not lie.

POINT IV

The lower court's conception of the purpose of the Communications Act of 1934 does not justify the decree.

The learned District Judge said that the Federal Communications Commission was

> "established for the benefit of the public, and to protect the public in regard to such matters as those involved in this case." (R. 52)

He talked of protection against "the telephone companies having a monopoly" (R. 52).

It might be remarked that the hotels are found here to be subscribers—part of the telephone company's "public"—and entitled to protection against its monopoly.

Then the District Judge went on to say that

> "tariff schedules * * * have the principal purpose of protecting the public against being overcharged." (R. 52)

And on the same page he argued that

> "if someone who has gotten telephone facilities as a subscriber, from the telephone company * * * undertakes * * * to render services to the guests, and then undertakes to surcharge and make the charge go above, in amount, the tariff schedule, that would be doing * * * what the law * * * did not mean to allow." (R. 53)

Of course, it is not for the court to substitute its views as to the purpose to be achieved for the intention of Congress as indicated by the language used in the statute. But it is submitted that any idea that it is contrary to the purpose of statutes regulating carriers to permit one who has purchased carrier service as a shipper or subscriber, and then adds other services and expenses of his own, to collect from his customer more than the carrier's tariff charge is in conflict with long established administrative practice.

An analogy from the field of transportation is the freight forwarder, as that term is used in domestic railroad transportation. A forwarder is one who undertakes to furnish to individual shippers of small lots through transportation of their freight by railroad or other common carriers. He assembles a number of small unit shipments; he obtains a car from the railroad, just as the hotels obtain telephone equipment from the telephone company; he loads the small shipments into the car and delivers them to the railroad at the terminal of its line, just as the hotel delivers to the telephone company at its trunk line through the PBX board the communications of its guests from their hotel rooms. The forwarder stands in the relation of shipper to the railroad and is obligated to pay the railroad's tariff rates which it charges to all shippers, *Warehouse Co.* v. *United States,* 283 U. S. 501, 512 (1930); *Lehigh Valley R. R. Co.* v. *United States,* 243 U. S. 444. Similarly, a hotel stands in the relation of subscriber to the telephone company and is obligated to pay the telephone company's telephone rate for all messages which it delivers to the telephone company at the PBX board, whether they originate in the hotel office or in a guest's room. The forwarder, in turn, makes a charge to his individual shippers for his own services over and above the amount which the forwarder pays in freight to the railroad. It has been held that the forwarder is not a railroad, that the service which the forwarder provides is not railroad service and that, therefore, the forwarder's charges are not to be specified in tariffs filed with the Interstate Commerce Commission and do not come under the jurisdiction of that Commission, *Acme Fast Freight* v. *United States,* 30 F. Supp. 968 (C. C. A. 2nd, 1940); affirmed per curiam, 309 U. S. 638.

But it has not been held that because a forwarder uses rail transportation to which he adds his own services of assembling and loading he may charge his customers no more than the railroads' tariff rates, nor has it been held that a forwarder illegally sells railroad service.

An appeal to public policy, similar to that invoked by the lower court here, was made with regard to freight for-

warders in *Int. Comm. Comm.* v. *Del., L. & W. R. R.*, 220 U. S. 235. Mr. Chief Justice WHITE stated the contention thus (p. 255):

> "Conceding, for the sake of the argument, the correctness of the construction which we have given to the second section, it is urged that nevertheless, as a forwarding agent is a 'dealer in railroad transportation', and depends for his profit in carrying on his business upon the sum which can be made by him out of the difference between the carload and the less than carload rate, and may discriminate between the persons who employ him, therefore the act to regulate commerce should be construed as empowering a carrier to exclude the forwarding agent as a means of preventing such discriminations."

It was held that since there was no express statutory authority, the practices of the forwarding agents of obtaining railroad transportation at carload rates and selling transportation to shippers of smaller quantities at higher charges could not on such a ground of supposed public policy be found unlawful under the Interstate Commerce Act.

The same error of being guided by its own views of public policy as to what should be subject to its regulatory authority rather than by the language of the Act is evident in the Commission's report, where it said:

> "If the collection of such surcharges were not subjected to regulatory control, a subscriber, or anyone else other than the telephone company, who is permitted by the telephone company to control access to the use of a telephone, could freely resell interstate and foreign telephone service, imposing any charges of his own on such use." (R. 26)

The conclusion does not follow the premise. The hotels are not making a profit by reselling telephone service at a higher rate than they pay therefor. They are adding their own services, which the telephone company refuses to perform, and are making reasonable charges therefor in addi-

tion to the charges of the telephone company. The decision in *Swift & Co.* v. *United States,* 316 U. S. 216 (1941), cited under the previous point, is also pertinent here. The problem was similar except that it involved "egress" from rather than "access" to the carrier's services. The Court said (p. 232):

> "Because the Yard Company in this specific and limited matter acts as agent for the railroads, and in the performance of that transportation service is subject to the jurisdiction of the Interstate Commerce Commission, it does not follow that the Commission may regulate, either directly or somehow, through the railroads, the other practices and charges of the Yard Company."

It held that the fact that egress from a railroad terminal was involved and that such egress could be had only through the stockyards did not prevent the stockyards from making a charge for their services and facilities nor did the fact that this affected the availability of railroad service give the Interstate Commerce Commission jurisdiction where such jurisdiction was not conferred by the language of the statute.

As Mr. Justice FRANKFURTER in the Opinion of the Court in *Scripps-Howard Radio* v. *Comm'n,* 316 U. S. 14 (1941), said with regard to an appeal to policy under another section of the Communications Act:

> "The considerations of policy which are invoked are as fragile as the legislative materials are inapposite."

POINT V

Enforcement of the telephone company's schedule if construed as prohibiting the hotels from making any charge for their services and expenses would be confiscatory.

The tariff schedule, if it were lawful and enforceable under the Communications Act, would have the controlling

effect of a statute, *Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 197 (1912).

This action to enforce the schedule is brought by the Government at the request of the Communications Commission, a regulatory agency. Moreover, it is alleged that the tariff schedule was filed pursuant to the Commission's order of December 10, 1943 (R. 9).

Under these circumstances, the enforcement of the schedule would plainly be an act of government and open to challenge under the Fifth Amendment if its result would be to take the property of the hotels for public use without just compensation. It is submitted that such would be the result.

The evidence shows that in the case of the Shoreham, the hotel taken as typical, the labor cost alone incurred by it in the year 1943 for the telephone operators and supervisors which it employed in providing service to its guests amounted to $21,895.62 and the annual cost of the equipment necessary for the service was $8,680.10. These figures include nothing for such other items of cost actually incurred by the hotels as overhead, rental of space, heat and light (R. 162). It is to compensate themselves for these costs that the hotels make their service charges involved in this suit. They secure compensation therefor in no other way. The uncontradicted evidence was that these costs are not included in the room rates charged to guests by the hotels nor in their food and beverage charges (R. 163). Consequently, if the hotels continue to make it possible for their guests to make and receive toll telephone calls in their rooms and continue to provide their guests with their various secretarial services, the result of enjoining them from making their service charges would be to deprive them of compensation for their services and thus take their property without just compensation and, indeed, without any compensation. It may be that the hotels could avoid such consequences by discontinuing their services, but this is a solution of doubtful practicality and it does not meet the legal objection which would deny compensation if the service is rendered.

It is likewise no answer to the objection here urged that the telephone company has made an offer to pay the hotels a commission of 15 per cent. But in any event the proposed commission does not represent an act of the Commission. It is not even embodied in any schedule so that the offer may be withdrawn at any time and it is not made a condition of the enforcement of the schedule that the hotels receive compensation for their services through such a commission from the telephone company.

POINT VI

The telephone company's schedule is valid only if construed as not having reference to the service charges of the hotels. Under such a construction, there is no violation of Section 203 and the suit should be dismissed.

The discussion so far in this brief has proceeded upon the assumption that the telephone company's schedule here under discussion is to be construed as prohibiting the hotels, as a condition of receiving toll telephone service, from continuing to make their own service charges for their hotel and secretarial services. This is the interpretation of the schedule placed upon it by the court below and by the Commission in causing the institution of this suit.

It is possible, however, that the schedule does not have this effect and should not be so construed. It provides that the "use of the service by guests shall not be made subject to any charge by any hotel * * * in addition to the message toll charges of the telephone company". The "service" referred to is "message toll telephone service". This service furnished by the telephone company is, as we have seen, something different and distinct from the services rendered by the hotels. Whether the telephone company's service is deemed, as we believe, to end at the PBX board or whether it includes the transmission of calls to and from the telephone instruments in hotel bedrooms, it certainly does not embrace the secretarial services and

other services which the hotels provide and which the telephone company expressly states that it does not provide.

It is submitted that it is reasonable to interpret the schedule as meaning that it is for the telephone company's service, as distinguished from the additional services furnished by the hotels, that no charge is to be made in addition to the telephone company's tariff rates. Indeed, such an interpretation is logically necessary if the schedule is not to be given a meaning far more restrictive even than that contended for by the Commission. Its language appears to permit a choice of only two interpretations—either that just suggested or an interpretation under which the hotels as a condition of receiving toll telephone services would be prohibited even from charging for their rooms. For guests cannot make telephone calls from hotel rooms without first having access to the rooms, so that in making a room charge the hotels literally make "the use of the service (toll telephone service) by guests" subject to a charge in addition to the telephone company's rates. Likewise, on such an interpretation, and apparently under the lower court's theory that no one wanting to use a telephone should be required to pay more than the telephone company's rates, a movie theater could not charge admission to a person seeking to enter the theater for the purpose of using a telephone in the theater lobby.

It is elementary that where tariff provisions are subject to two or more possible interpretations the more reasonable should be adopted and also the language should be construed against the carrier framing it. *Norwich Wire Works, Inc.* v. *Boston & M. R.*, 229 I. C. C. 395, 398; *Andrae & Sons Co.* v. *Chicago, M. & St. P. Ry. Co.*, 153 I. C. C. 227, 229.

It is likewise elementary that an interpretation under which a tariff provision would be lawful should be adopted in preference to one under which it would be invalid. *Great Northern Ry.* v. *Delmar Co.*, 283 U. S. 686, 690, 691; *Penn Oil Co.* v. *Atchison, T. & S. F. Ry. Co.*, 188 I. C. C. 351, 354.

These considerations argue that the schedule here involved should be construed only as prohibiting the hotels from making a charge in addition to the telephone company's rates for the services which the telephone company provides, but not as prohibiting them from making service charges for their own hotel and secretarial services. On this construction there has been no violation of the schedule, and the suit should be dismissed.

POINT VII

In view of the lower court's finding that the telephone company was not violating the Act, it was error to enjoin the hotels.

The hotels were joined as defendants under Section 411(a) of the Communications Act of 1934 (47 U. S. C. 411) (R. 4). This section provides:

> "(a) In any proceeding for the enforcement of the provisions of this chapter, whether such proceeding be instituted before the Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers."

It is not denied that the hotels are "interested in or affected by the charge, regulation or practice under consideration". Therefore, by the terms of Section 411(a) it appears to be lawful to include the hotels as parties in this proceeding. It does not follow that an injunction may issue against them if none is warranted against the telephone company.

The only provision in the section for a decree against the hotels is found in the words "decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers." If the carriers involved in this proceeding are not in violation of Section 203 of the Communications Act of 1934 and it has been expressly held that they are not, it is difficult to find in Section 411(a) the authority under which a decree was entered against the hotels. On the contrary, by authorizing decrees against additional parties only "to the same extent" as with respect to carriers, Section 411(a) provides, in effect, that if no decree "shall be authorized by law" against the carriers, then no decree is authorized against the additional non-carrier parties who are included in the suit only by virtue of Section 411(a).

This reasoning is confirmed by the fact, previously referred to, that according to its terms Section 203 can be violated only by a carrier since its prohibitions run only to carriers. Hence, if the carrier is not violating Section 203, there is no violation of the statute and obviously there can be no injunction against anyone if there is no violation to enjoin.

Further support for this conclusion is found in the penalty provision of Section 203, paragraph (e). If there is a violation of Section 203, not only may it be enjoined, but the statute also provides penalties. However, it is only the carrier which is liable therefor.

It is plain that it is the purpose of Section 411 to make it possible, in the event of a violation of the Act by a carrier, to afford complete assurance against repetition or continuance by enjoining the carrier and also enjoining the subscribers or other parties involved. But unless there is a violation by the carrier, there is no basis for a decree against a subscriber.

POINT VIII

This case is distinguishable from the cases relied upon by the Commission in its report.

Judge O'Donoghue in his opinion cited no authorities in support of his conclusions. However, a number of decisions are cited by the Commission in its report (R. 27) in support of its order, pursuant to which the schedule here in issue was filed. The Commission cited these decisions with the remark

> "that courts and other commissions which have considered the problem of surcharges similar to those in question here have concluded that such surcharges are subject to regulation by the public utility commission as part of the regulation of public utility telephone service." (R. 27)

This comment is in itself sufficient to distinguish these cases from the one at bar since, in view of the fact that the hotels are neither carriers themselves nor agents of the telephone company, it cannot be found that their services are telephone communication services subject to the Communications Act. This distinction is confirmed by an examination of the cases themselves. Only two of the cases cited went to the courts, *Hotel Pfister* v. *Wisconsin Telephone Co.*, 203 Wis. 20 (1930), and *People ex rel. Public Service Commission* v. *New York Telephone Co.*, 262 App. Div. 440 (1942), affirmed 287 N. Y. 803.

The theory of the *Pfister* case was that the telephones in hotel rooms were public telephones and that the hotel was the agent of the telephone company. The court said (p. 24):

> "It is quite true, of course, that the hotel is not a public utility. But even so it may, like any other corporation or private person, be the agent of the company in aiding it to perform its service to the public."

Likewise in the *New York* case the decision was predicated upon agency. There it appeared that the schedules of the telephone company "designate hotel subscribers as agents of the telephone company in rendering telephone service to their guests".

The finding of the court below that no agency relation exists here between the hotels and the telephone company and the evidence amply sustaining that finding require the conclusion that the principles of the cases cited are not applicable here. Moreover, there is the factual difference that in both of the cases cited the tariff of the telephone company provided for the collection of an extra charge over and above its ordinary rates in the case of telephone calls made from hotel rooms and provided compensation to the hotel out of such additional charge, whereas here the schedule would prohibit any extra charge.

Conclusion

In the last analysis, the decision in this case must turn largely upon the relationship which exists between the hotels and the telephone company. Three possibilities suggest themselves and have been suggested in the report of the Commission:

The first possibility is that the hotels are agents of the telephone company to complete its service, that everything they do is done for the telephone company, and that the charges which they collect are charges of or for the telephone company. If this were the situation, it would be proper to conclude that the tariff specifies or affects the charges collected by the telephone company through the agency of the hotels for telephone communication service furnished through the same agency. The only question would then be as to the reasonableness of the schedule and this would be a matter for the Commission. Even here it is not clear that the hotels as agents could violate the tariff and Section 203 of the Act if there were no violation on the part of the telephone company as their principal. This conception of the situation is, however, definitely barred

by the decision of the lower court that no relation of agency exists between the hotels and the telephone company.

The second possibility is that the hotels are themselves common carriers and engaged in providing communication service to the public and are connecting carriers of the telephone company. In this event, the hotels' charges would be subject to regulation by the Commission and should be shown in tariffs filed with it. Even so, a tariff filed by the telephone company purporting, without their consent, to fix the hotels' charges would not be valid and enforceable as a tariff or joint service. However, neither the Commission nor the court has found that the hotels are connecting carriers.

The third possibility is that the hotels are subscribers; in other words, patrons of the telephone company's service. The lower court so found. The schedule plainly treats the hotels as subscribers. This is the correct interpretation of the relationship. In this relationship no violation of Section 203 exists and the present suit cannot be maintained because (a) the hotels' charges are not charges by or for a carrier for communication service under the Act; (b) the schedule here does not specify or affect the charges collected or received by the telephone company for its communication service, and is therefore not a schedule enforceable under Section 203; and (c) the statute does not permit the filing with the Commission and enforcement under Section 203 of a schedule, such as that here, specifying or regulating the charges made by subscribers for their own goods or services or making the furnishing of refusal of telephone service dependent thereon.

The judgment below should be reversed.

Respectfully submitted,

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Attorneys for Appellants.

February 16, 1945.

Appendix

Pertinent Provisions of the Communications Act of 1934

(June 19, 1934, 48 Stat. 1064 ff., 47 U. S. C. §§ 151 ff.)

SECTION 153(a):

"Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

SECTION 153(h):

"Common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

SECTION 153(r):

"Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

SECTION 153(s):

"Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

SECTION 201(a):

It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

SECTION 202(a):

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

SECTION 203:

(a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such

charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

SECTION 401:

(a) The district courts of the United States shall have jurisdiction, upon application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this chapter by any person, to issue a writ or writs of mandamus commanding such person to comply with the provisions of this chapter.

(b) If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby, or the United States, by its Attorney General, may apply to the appropriate district court of the United States for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such person, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

(c) Upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

(d) The provisions of sections 28 and 29 of Title 15, section 345(1) of Title 28, and sections 44 and 45 of Title 49, shall be held to apply to any suit in equity arising under sections 201-221 of this title, wherein the United States is complainant.

SECTION 411(a):

In any proceeding for the enforcement of the provisions of this chapter, whether such proceeding be instituted before the Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER and ROBERT O. SCHOLZ, a Partnership, *et al.*, *Appellants*,

v.

UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, *et al.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS

PARKER MCCOLLESTER,
GEORGE DEFOREST LORD,
JOSEPH W. WYATT,
Attorneys for Appellants.

March 8, 1945.

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I

As to the Facts

The briefs for both the Government and the telephone company* accept generally the statements of fact contained in the main brief for the hotels. There is no dispute concerning what may be called the physical facts. The controversy is as to the inferences to be drawn therefrom and then as to their legal effect. Counsel for the telephone

* In this reply brief, as in appellants' main brief, the American Telephone & Telegraph Company and the Chesapeake and Potomac Telephone Company will be referred to collectively as "the telephone company." Figures in straight type refer to the Government's brief and figures in italics to the brief for the telephone company.

company, however, take exception (*Br. 3*) to our reference to the hotels as "procuring" equipment from the telephone company and "furnishing" telephone facilities so procured to their guests. It is asserted for the telephone company that its equipment "is not rented to the hotels" and that "what the company furnishes and charges for is telephone service". Of course, we did not mean to imply that the hotels furnish the physical telephone instruments to their guests to take away with them, as distinguished from the convenience and accessibility to the telephone company's service which the telephone instruments, the PBX board and the internal wiring in the hotel make possible. Whether it is proper to say that the hotels "procure" the facilities from the telephone company is a matter of words rather than substance. The hotels, as part of the installations which guests expect in a modern hostelry, cause telephone instruments to be installed in their rooms and connected with the PBX boards which they obtain and operate. The hotels could procure such equipment elsewhere except for the regulation of the telephone company (R. 132) by which it refuses to make connection with equipment not obtained from it. Monthly charges are paid for the equipment. Certainly, despite the telephone company's plea that their monopoly equipment charges are for service, the transaction involved in obtaining equipment, has all the characteristics of rental. It is not the telephone company's choice whether any equipment is installed in a hotel, or how much. The equipment is ordered by the hotel. The telephone company does not come into the hotel to operate it. It is operated by employees of the hotels. The equipment may be used entirely for intra-hotel communication without any contact with the telephone company, and whether it is used at all for outside communication depends upon the will of the hotel. Moreover, even if the equipment is "furnished" and not "rented" to the hotels, this does not make what transpires within the hotels "service" by the telephone company. There can be no "service" without operators, and these are employed and directed by the hotels.

II

Reply to the Arguments of the Government and the Telephone Company

A. **The relationship between the hotels and the telephone company.**

The Government's brief makes it clear that this case is submitted by it on the basis that the relationship between the hotels and the telephone company is that of subscriber or patron and carrier. The Communications Commission in its report (R. 28), in searching for a ground for its claim of jurisdiction over the service charges of the hotels and of the application thereto of the Communications Act of 1934, as amended, suggested (R. 28) that there were three possible relationships which might exist between the hotels and the telephone company: (1) that the hotels were agents of the telephone company; (2) that they were connecting carriers; and (3) that the hotels were subscribers or patrons of the telephone company's service. The Commission expressly disclaimed any finding that the hotels were connecting carriers (R. 30). It found that they were agents of the telephone company (R. 29). It concluded, however, that its views would be met if the telephone company should file a tariff schedule in terms compatible only with a carrier-subscriber relationship (R. 30).

The lower court rejected the idea of agency and found that the hotels were subscribers to the telephone company's service (R. 52, 63). No error has been assigned to that finding. The Government, in its brief, now states (p. 28):

> "No contention is made in this case that appellants are 'connecting carriers' within the meaning of the Act; and we accept for present purposes the finding of the court below (R. 63) that in extending interstate and foreign telephone service to their guests they are not acting as the agents of the telephone companies."

The position of the telephone company is similar (*Br. 3*).

The question here, therefore, is whether, when the relationship is that of carrier and subscriber, a tariff schedule by which the carrier attempts to impose on the subscriber a condition such as that involved here, is a schedule required by Section 203(a) to be filed with the Commission, is valid and may be enforced in an action under Section 401.

B. **Since the hotels are subscribers and perform their services as such and not as connecting carriers nor as agents of the telephone company, the Government's argument that such services may in part come within the statutory definition of "wire communication" does not establish the validity and enforceability of the tariff schedule.**

The Government (Br. 9-10, 14-15) maintains that the services which the hotels render to their guests and for which their service charges are made, are, at least in part, embraced within the statutory definition of "wire communication" (Section 153). However, the Government fails to explain how activities which may otherwise satisfy that definition come within the terms of the Act if they are the activities, not of a carrier but of a subscriber which is not a common carrier.

A large industry may own locomotives and cars or may rent them from a railroad. It may have an extensive track layout over which it moves cars loaded with goods throughout its plant or even for long distances. Its facilities and activities may thus come within the definitions of "transportation" and "railroad" contained in the Interstate Commerce Act (Section 1(3)(a), 54 Stat. L. 899). But since the industry is not a common carrier, the fact that its activities and facilities satisfy the definitions of "transportation" and "railroad" does not bring them within the scope of transportation subject to that Act nor permit or require that any charges which the industry may make to its patrons may be controlled by tariff schedules filed with the Inter-

state Commerce Commission, *United States* v. *Am. Tin Plate Co.*, 301 U. S. 402 (1936); *Penna. R. Co.* v. *P. U. Comm'n*, 298 U. S. 170 (1936); *Pennsylvania R. Co.* v. *M. McGirr's Sons Co.* (C. C. A. 2d, 1922), 287 Fed. 334; certiorari denied 262 U. S. 743.

The situation here is similar. This is a suit to enjoin an alleged violation of Section 203 of the Communications Act (R. 4). The entire Act makes it plain that its provisions concerning "wire communication", and especially Section 203, relate to the furnishing of "wire communication" by a "common carrier". Only a "common carrier" is required by Section 203 to file tariff schedules, and only such a carrier is prohibited from engaging in "wire communication" unless a schedule is filed and published. Only a carrier is prohibited from charging, demanding or collecting a greater, less or different compensation for such communication than that shown in its tariffs. The statute measures the Commission's jurisdiction, and since it regulates wire communication only by a common carrier or connecting carrier, it cannot, no matter how broad the definition of "wire communication" may be, regulate wire communication by a hotel which is conceded by the Government's brief (p. 28) to be neither a common nor connecting carrier.

Moreover, if the service which the hotels provide were deemed to constitute "wire communication" within the application and for the purposes of the Act, this would mean that the telephone company could be required to provide the service now rendered by the hotels and any businesses having PBX installations, such as offices, stores or industrial plants. This follows from Section 201(a) of the Act, which provides that it shall be the duty of every common carrier engaged in interstate or foreign communication by wire to furnish "such communication service upon reasonable request therefor". Such a result would probably not be satisfactory to any of the parties before this Court, but it would be more satisfactory to the hotels than being obliged to supply the service without reimbursement.

The telephone company's brief brings even more clearly into focus the essential issue here. On page 3 of its brief, counsel for the telephone company state of the hotels

> "that they are not common carriers, that they are not agents of the telephone companies, and that their surcharges are charges for hotel services and not charges for wire communication under the provisions of the Communications Act."

The question, therefore, is whether, by a tariff filed with the Commission the telephone company may control the charges of hotels which are not carriers for hotel services which are not wire communication subject to the Act. We submit that the answer must be in the negative.

C. The Government's appeal to policy does not sustain its position in the face of the language of the statute. Moreover, it is based upon unwarranted assumptions as to the purpose of the Communications Act and as to the administration of other regulatory statutes.

On page 16 of the Government's brief, it is argued that if appellants' contention were sustained

> "effective regulation of interstate and foreign telephone rates would be substantially impaired."

It is then said

> "Under appellants' theory, the Commission could prescribe rates on long distance calls to and from the PBX board, but neither the Commission nor any other agency charged with the regulation of telephone rates could prevent any amount of additional charges being assessed against the guest making or receiving the call."

But there is nothing astounding in this. The plain fact is that Congress has not given the Commission power to regulate the charges of hotels, nor is there anything in the

provisions of the Communications Act which would indicate a policy of so doing. Whether regulation of the hotel charges by the Act is desirable or not, the fact is that Congress has not attempted to regulate charges for services other than those of carriers. As Mr. Justice CARDOZO said in *Penna. R. Co.* v. *P. U. Comm'n;* 298 U. S. 170 (1936), at page 177:

> "If the concept of transportation is in need of expansion, it is for the legislative department of the government to determine how great the change shall be."

The Government's argument goes to the point that it is the policy of the Act that those who avail themselves of the telephone company's services must be controlled in what they do in connection therewith. We submit that this is not so and that in any event the language of the statute rather than the views of the Commission as to what public policy requires must control.

The purpose of the Act is to regulate the charges to be collected and received by telephone companies. What the customers or subscribers of the telephone company, who pay its tariff rates, may then do is left to the control or regulation of other agencies or of economic forces. The failure of Congress to regulate what hotels may charge while regulating the charges of telephone companies is perfectly logical. Hotels are not monopolies. Their prices are regulated by competition. The report of the Commission in Docket No. 6255 (R. 26), the brief of the telephone company (*p. 9*), and, to a lesser extent, the brief of the United States (p. 16) treat the situation as though the hotels had complete control of access to the use of the telephone by guests. This is a fundamental error in their approach to the problem. The hotels do not control access to the telephone. All the guest has to do is to go to the coin box telephone or other public telephones installed in the hotels which are regulated by the Washington tariff (R. 222) which provides that hotels cannot make surcharges for telephone messages from instruments accessible to the

general public. In that event the guest can not be denied access to the telephone. While the court below and the Commission expressed fears that the hotels, if not regulated, could resell interstate and foreign telephone service at any price they chose, it would be difficult, if not impossible, to imagine a hotel management so stupid as to voluntarily irritate its guests by grossly excessive charges. The only effect of this would be to drive the guest to the use of another hotel, which is the last thing the hotels desire. Moreover, there is no evidence or claim of any abuses or overcharges by the hotels.

In these days it has become a part of the hotel facilities which guests expect, like bellboy and valet service, that they shall be able to make telephone calls from their hotel rooms, receive calls there and receive a certain amount and kind of message and secretarial services. If messages are not correctly taken, it is the hotel and not the telephone company which is blamed by guests. The hotels can provide this service to their guests *as a part of their hotel installation and facilities,* only by renting equipment from the telephone company, employing operators, subscribing for toll service and paying the telephone company's tariff rates. We submit that when they do the latter, the language and purpose of the Act are satisfied and that fulfillment of that purpose does not extend the application of the statute to cover the manner in which the hotels reimburse themselves, the services which they provide, or the charges which they make to their guests.

The Commission and the Government's brief in supporting its position have proceeded on the erroneous assumption that the objective of regulating the charges of common carriers is defeated unless the regulation is extended to the charges made by the patrons of the common carriers. This has not been the view which has governed the administration of the Interstate Commerce Act. We recall the example cited in our main brief of the freight forwarder who buys railroad transportation and then resells transportation, adding something for his services,

where it has been held that the forwarder's charges are not subject to control by tariffs filed with the Interstate Commerce Commission. *Acme Fast Freight* v. *United States*, 30 F. Supp. 968 (1940), 309 U. S. 638.

At page 17 of its brief, the Government refers to cases involving the regulation of hotel charges by public utility commissions in the past. These decisions are entirely irrelevant because they arose under other statutes and were based on the theory that the hotels were acting as agents for the carrier. (See pages 65 and 66 of appellants' main brief.) Moreover, the opinions in some of these cases indicate that they were influenced largely by notions of public policy, such as those advanced by the Government here. Whether or not this was warranted under the various statutes involved in those cases, it is plain here that the Commission and the courts may not add to the action of Congress.

D. The Government finds support for its argument only by adding words to the language of the statute.

In appellants' main brief the point was made that the tariff schedule is not one required by Section 203 to be filed and observed since it attempts to regulate the charges of the hotels, which are not carriers, and in no way specifies or affects the charges collected or received by the telephone company. We pointed out that under the provisions of Section 203 the only tariff schedules which a carrier is required to file are such as specify or affect the charges of the carrier "for itself and its connecting carriers".

The Government, in its brief, terms this reference to the language of the statute "pedantic" and "inelastic" (Br. 19).

The fact is, however, that rather than being a "pedantic" or "inelastic" interpretation of the Act, the interpretation presented by the hotels is the only construction of the words possible without introducing new language into the section. The Commission's brief seeks in effect to add to the simple, precise words of the statute

"charges for itself and its connecting carriers",—words which are perfectly plain in their meaning, the further words "and for hotels, apartment houses and clubs." It is utterly illogical to state that the words "charges for itself" mean charges by the hotels for themselves. The two final sentences of this argument (pp. 19-20) assert that Section 203(a) requires the inclusion in filed schedules of all charges for the service of a carrier and connecting carriers, whether exacted by the carrier itself or "by others with its knowledge and acquiescence." It is argued from this that the charges fall within Section 203 "regardless of whether the hotels in imposing the charges do so for their own benefit or as agents for the carriers." The statute does not so provide, either expressly or even by remote implication.

Moreover, these assertions assume that the hotels' charges are "for such carrier's service and the service of its connecting carriers." This is contrary to the fact and inconsistent with the balance of the Government's argument and that of the telephone company, which properly recognize that the charges are for the hotels' services, and that the hotels are entitled to reimburse themselves for these services. Thus the Government contends (Br. 22) that there is no effort on its part to control the hotel business. It concedes the right of the hotels to recover

> "such expenses, secretarial or otherwise, as they may incur in making available to their guests the telephone companies' interstate and foreign telephone service."

It says that

> "* * * Such expenses may be recovered in any lawful manner which appeals to the business judgment of the hotels' managers. Whether the recovery is by means of increased room rates, by flat service charges on each guest, by fixed fees for each service rendered, are matters beyond the reach of the regulation and beyond the concern of the Commission."

We have demonstrated in our main brief the inequity of these methods suggested by the Commission. If the room

rates were increased, some guests who never use the telephone would be forced to bear a part of the expense attributable to those who use it extensively. Flat service charges to each guest and fixed fees for each service rendered would not be uniform, if uniformity is necessary, and would be just as contrary as the present charges to the tariff schedule here in issue, providing that

> "the use of the service by guests * * * shall not be made subject to any charge * * * in addition to the message toll charges of the Telephone Company as set forth in this tariff." (Tariff, R. 9, 38.)

The Government concedes that there is no objection from the standpoint of public policy to the hotels' reimbursing themselves for the services they render. Thus the case against the hotels is resolved into objection to the "manner which appeals to the business judgment of the hotels' managers" as the fairest way of obtaining reimbursement for their costs and compensation for their services.

It is submitted that without writing new language into the statute its provisions cannot be extended to apply to the method which a subscriber adopts to reimburse itself for the expense of services outside the scope of the Act.

E. Since the hotels' charges are for hotel services and not for wire communication subject to the Act, the attempt to control them by tariff and to enforce compliance therewith by an action under the Act cannot be defended on the ground that the schedule is valid regulation of the telephone company's charges or services.

Despite the fact that the amount which the telephone company receives for a toll charge is neither increased, decreased nor affected in any way by the tariff schedule here in issue, both the Government (Br. 20-21) and the telephone company (*Br.* 6-8) attempt to defend the schedule as a regulation in some way affecting the telephone company. None of the reasons given, however, brings the

regulation within the language of the statute as specifying or constituting a classification, practice or regulation affecting the *charges* of the telephone company "for itself and its connecting carriers", nor as a specification of charges for wire communication by a carrier subject to the Act.

The Government argues that the regulation is one "specifically affecting the telephone companies' own service" (Br. 20). But while this argument might lend support for the schedule if the Communications Act contained the much broader language found in Section 6 of the Interstate Commerce Act, providing that tariffs of railroads shall show not only charges but also "all privileges or facilities granted * * * and any rules or regulations which in any way * * * affect * * * the value of the service rendered", the argument does not have force under the language of the present statute, which clearly confines the concern of Congress to regulations affecting "charges" of the telephone company.

The telephone company defends the regulation on the ground that it "affects the telephone companies in their business." The argument is that if the hotels made too high a charge this would deter the hotel guests from using the telephones in their rooms. An equal deterrent would be provided, however, if the hotels so increased their room rates as to discourage patronage or if they made a flat fee or service charge, all of which the Government concedes to be proper. The reference in Section 203 to regulations "affecting such charges" certainly does not mean regulations affecting the volume of business done by the telephone company, but rather, the exact charges made for individual telephone calls.

The Government asserts further (Br. 20), that regulations "defining the rights, privileges and restrictions attaching to a particular type of service offered, are a commonplace of telephone tariffs * * * and form as proper a part of the tariff as does the schedule of charges itself." No analogy is furnished by the regulation of The Chesa-

peake and Potomac Telephone Company prohibiting hotels from making service charges "for messages from instruments 'accessible to the general public or to guests, tenants or members generally' ". That tariff involves only telephones accessible to the public. This case does not concern telephones accessible to the public. It relates to services and facilities provided by the hotels only for their guests. In our main brief we pointed out that it was conceivable that the telephone company might properly make certain regulations for the purpose of protecting its equipment, facilities and service. However, as we said, it does not follow that a regulation which is proper in this sense and which may give the carrier certain rights in relation to its subscribers, may be enforced by the Government in an action under Section 401, or that failure to observe such regulations, even if published in a tariff, would constitute a violation of Section 203. It is only where a regulation affects the charges collected by the telephone company that failure to comply constitutes a violation of Section 203.

The telephone company cites two cases at page 8 of its brief—*1015 Chestnut Street Corp.* v. *Bell Telephone Co. of Pennsylvania,* PUR 1931A, 19, 7 PUR (NS) 184 (1930, 1934); *Budd* v. *Southwestern Bell Telephone Co.,* 28 PUR (NS) 235 (Mo. P. S. C., 1939), as support for its argument that regulation of the kind here in issue has been sustained by the State Commissions. The fact is, however, that in the decisions themselves the Commissions held that the factual situations offered no analogy to the situation with reference to regulating PBX telephone service to hotels. Moreover, the regulations referred to by the Commission and the telephone company are not similar in character to the regulation here in issue. For example, the telephone company's brief (*p. 8*) refers to a regulation which it states affects the subscribers in their business. The regulation referred to is one which limits the use of the telephone to the subscriber, his agents and representatives. However, that regulation appears only to apply

"where the service is on an unlimited flat rate basis." (R. 220). It is obvious that such a limitation would affect the charge for unlimited flat rate service, but the validity of such a limitation affords no analogy to a case involving a message rate. Furthermore, it is significant that no decision is cited holding that failure to observe the regulations referred to constitutes a violation of Section 203. We refer to the discussion at pages 28, 43, 48-54 of appellants' main brief.

F. This Court is not bound to accept the administrative action of the Commission as suggested by the Government.

The Government (Br. 23) seeks to distinguish the cases of *United States* v. *Am. Tin Plate Co.*, 301 U. S. 402; *Swift & Co.* v. *United States*, 316 U. S. 216; and *Acme Fast Freight* v. *United States*, 30 F. Supp. 968 (S. D. N. Y.), on the ground that they refer to matters before the Interstate Commerce Commission. Its plea that

> "there is obviously no such identity in the conditions and problems of the two industries as to call for the indiscriminate application of decisions in one field to cases arising in the other"

is obviously inconsistent with its own citation of the *Tin Plate Co.* case and other railroad cases later in its own brief (pp. 29, 31).

The Government then suggests (Br. 23) that consistently with "The deference shown by this Court" to the prior "factual determinations by the Interstate Commerce Commission", the Court here should not disregard "the comparable factual determination of the Federal Communications Commission in its specialized sphere."

There are several answers to this suggestion.

In the first place, the Government concedes (Br. 30) that the hotels are neither agents nor connecting carriers. This eliminates the necessity for a "factual determination" by

the Commission, and is indeed a rejection by the Government of the determination which the Commission made.

In the second place, this case involves a question of jurisdiction over the hotels as subscribers and in no other capacity. This is a question of law which depends solely on the interpretation of Section 203 of the Act and only upon the meaning of a few words of that section. Subdivision (a) of that section provides that every common carrier shall file schedules showing all charges for itself and its connecting carriers,

> "and showing the classifications, practices, and regulations affecting such charges."

There is no complex or intricate state of disputed facts to be submitted to an administrative body familiar with the practices involved. As the Government puts it (Br. 7) "there is no substantial dispute in the evidence."

G. The so-called submetering cases are distinguishable.

Both the Government (Br. 18) and the telephone company (*Br.* 8) *cite Lewis* v. *Potomac Electric Power Company*, 64 F. (2d) 701, and various other cases commonly called the submetering cases, having to do with the resale of electric current. In the *Lewis* case it was held that the Electric Power Company could refuse to sell current to an office building for resale by the latter to its tenants at higher rates than paid to the power company. The decision rested upon the court's view that a power company could refuse to furnish current for resale. In some of the submetering cases, for example, *Florida Power & Light Co.* v. *State*, 107 Fla. 317 (1932), the right of the power company to refuse to sell current to one intending to submeter and resell it was upheld upon the ground that the submetering buyer would become a competitor of the power company, which had the right to protect itself against such competition. Obviously, no such situation is present here. The telephone company furnishes telephone service to the hotels with express permission to make it available to their guests.

Moreover, it does not appear in the submetering cases that the office buildings or apartment houses rendered any services of their own or did more than resell the electric current supplied by the utility at higher rates than those paid by them.

The hotels obtain the telephone company's service for their guests at the exact charges paid by the hotels in accordance with the telephone company's tariff rates, but, even more important, they provide additional services. Their service charges do not represent a profit from the resale of the telephone company's service, but, instead are compensation for the additional services rendered by the hotels and reimbursement to them for their expense therefor. Apart from the decision below and that below in the New York case (No. 823), we know of no decision, in which it has been held that one who has himself performed services and incurred expense in the course of his own business, in making the services of a common carrier available to his own customers, is precluded from charging for his services and reimbursing himself for his expense. Certainly this has not been held with respect to freight forwarders, who stand in the relation of shippers to railroads and make railroad transportation available to their patrons by adding their own services of assembling and loading.

Finally, the submetering cases present an entirely different problem from that which is here before the Court, since in the submetering cases the power companies sought to deal directly with the individual consumers and the question involved was the right of a power company to refuse to sell current to a middleman when the power company did not wish to do so because it would thereby be prevented from dealing directly with the ultimate consumers. As the court said in the *Florida Power & Light Company* case (pp. 322-323), cited on page 8 of the telephone company's brief and on page 18 of the Government's brief:

> "A public utility company's right to fix its own rates also includes the right to so prescribe and enforce them that all the company's dealings will be with the real purchasers and users of its service, without submitting to the requirement of delivering its service through the medium of a third party over which the company would have no control."

It is not claimed by the telephone company here that it desires to have direct dealings with hotel guests and that the regulation involved is not designed to accomplish this result. It would obviously be utterly impossible for it to do so because the hotel guests are for the most part transients. The telephone company's service is available to guests only because the hotels have procured the necessary facilities and employees and because they arrange in each instance for the placement of calls for their guests. Under these circumstances the telephone company cannot assert that the regulation here in issue is justified on the principle supporting the regulations involved in the submetering cases.

The last two cases cited by the Government (Br. 18) in connection with submetering do not deal with that subject. The *Rogers* case said a business corporation could not sell surplus power which it generated for its own use, and the *New York Edison Company* case said that a business corporation which produced its own power and resold it to tenants could not compel the Edison Company to provide breakdown service for the tenants.

H. In the absence of a finding that the telephone company violated the statute and of an injunction against it, it was error to find a violation by the hotels and to enjoin them.

In our main brief, we urged that the prohibitions of Section 203 are directed only to common carriers and that unless there is a violation by the telephone company, no violation can be found to exist. We also urged that in view of

the language of Section 411, no decree could be issued against the hotels as subscribers unless there was a decree against the telephone company.

The Government took no appeal from the refusal of the lower court to enter a decree against the telephone company; it assigned no error to the finding of the lower court that "the telephone companies are not violating the tariff schedules at all" (R. 54); nor to the lower court's failure to find and conclude that there was any violation of Section 203 on the part of the telephone company. It is submitted that under these circumstances the Government is bound by the action of the lower court and may not properly now urge, as it does (Br. 34, 35), that the "finding that the telephone companies were not violating the regulation" is an "error of law which may and should be corrected by this Court", or that this Court should dispose of this case as though the lower court had found a violation by the telephone company and entered a decree against it. *Bolles* v. *Outing Company*, 175 U. S. 262 (1899); *Guardian Savings & Trust Co.* v. *Dillard* (C. C. A., 8th, 1926), 15 F. (2d) 996; *Morley Construction Co. et al.* v. *Maryland Casualty Co.*, 300 U. S. 185 (1937); rehearing denied 300 U. S. 687, 302 U. S. 779.

The last four decisions cited by the Government on page 35 of its brief do not support its position here. True they hold, as stated, that if a judgment below is proper on correct principles, it may stand regardless of an erroneous conclusion of law by the lower court. It does not follow, however, that if a finding of fact that the telephone company was violating Section 203 is necessary to support an injunction and no such finding was made by the lower court, this Court may dispose of the appeal on the assumption that there was such a finding. Neither does it follow that if our contention is correct that there may be no decree against the hotels except to the extent that a decree is entered against the telephone company, this Court may proceed upon the assumption that there was such a decree when none was entered by the lower court and no appeal was taken from its action. The Government's contention vio-

lates the principle stated in *Morley Construction Co. et al. v. Maryland Casualty Co., supra* (p. 191) that:

> "What he [an appellee] may not do in the absence of a cross-appeal is to 'attack the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary, whether what he seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below.' *Ibid.* The rule is inveterate and certain."

Respectfully submitted,

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March 8, 1945.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 446.

AMBASSADOR, INC., *et al.*,
Appellants,

v.

THE UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, and THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

BRIEF IN BEHALF OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY AND THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY, APPELLEES.

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OPINION BELOW.

The opinion of the Court below appears in the record at pages 50-55. It has not been officially reported.

JURISDICTION.

The appellants invoked the jurisdiction of this Court under the provisions of the Expediting Act approved February 11, 1903, as amended, 15 U. S. C., Section 29, 49 U. S. C., Section 45, and Section 238(1) of the Judicial

Code, as amended, 28 U. S. C. 345, as extended by Section 401(d) of the Communications Act of 1934, as amended, 47 U. S. C., Section 401(d).

STATEMENT.

This brief is filed on behalf of the American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company, appellees. (It will be convenient to speak of them as the telephone companies or, with respect to the service they join in furnishing, simply as the telephone company.) In the District Court the Government sought an injunction against the telephone companies as well as against the hotels to restrain violation of the tariff in issue. The reason advanced by the Government for an injunction against the telephone companies was that they had continued to render service to hotels which were making surcharges on interstate and foreign toll calls of their guests in violation of the tariff. The District Court held that this did not constitute a violation of the tariff on the part of the telephone companies and denied an injunction against them, but retained jurisdiction to enjoin them from rendering service to hotels which might thereafter violate the injunction granted against the hotels, if that should become necessary to effectuate the court's decision (R. 55, 69). There has been no appeal from the denial of an injunction against the telephone companies, but the hotels have appealed from the injunction against them.

It is the position of the telephone companies here, as it was below, that the tariff provision in question is valid and should be enforced. It is also their position that the District Court correctly decided that no injunction should be awarded against the telephone companies.

We take no issue with the statement of facts in the brief for the appellants (whom we shall call the hotels) except in so far as they claim to be "procuring" equipment from the telephone company, paying the telephone company for that equipment and then "furnishing" telephone facilities so procured to their guests (Brief, pp. 7, 8, 52). This is a misconception. The equipment in the hotels is the property of the telephone company, installed and maintained by it as an integral part of its own plant. It is not rented to the hotels, although some part of the charges for service furnished under local tariffs is computed in terms of the equipment installed. What the company furnishes and charges for is telephone service. The service subscribed for by the hotels is available for use both by the management of the hotels and by the guests.

The material differences between the hotels and the telephone companies relate, however, not to matters of fact but to the nature of the tariff and its legal effect. This brief will be addressed to those differences and the facts will not be restated except where necessary to make our position clear.

To clear the ground, let us say at once that we agree with the position of the hotels thus far,—that they are not common carriers, that they are not agents of the telephone companies, and that their surcharges are charges for hotel services and not charges for wire communication under the provisions of the Communications Act. With these points behind us, a brief examination of the nature of the tariff provision should dispose of the controlling issue in the case.

ARGUMENT.

I.

The Tariff is a Valid Regulation stating a Condition upon which Telephone Service is Furnished to Hotel Subscribers, and not a Publication of Charges for Hotel Services or an Illegal Interference in the Hotels' Business.

Section 203(a) of the Communications Act requires common carriers to file tariffs showing their charges for telephone communication, and the classifications, practices and regulation affecting such charges.* The hotels contend in their brief (pp. 32-35) that the tariff provision in issue is not validly filed pursuant to that section, but is instead an unauthorized attempt of the telephone companies to publish for the hotels, which are not common carriers, charges collected by the hotels for hotel services, which are not communication service under the Act. Accordingly, it is argued that a violation of the tariff provision does not constitute violation of Section 203(a), and the suit, which is predicated on that theory, must fail.

The tariff will not bear the construction the hotels seek to place upon it. It was filed by the telephone companies in compliance with the report and order of the Federal Communications Commission in its investigation of hotel surcharges in the District of Columbia, its Docket 6255 (R. 14), which required the telephone companies either to file in their tariffs schedules of the charges to be collected by hotels or to deal with the matter by filing a regulation prescribing the conditions upon which the service is furnished (R. 37). The telephone companies chose the latter

* Subsections (a), (b) and (c) of Section 203 of the Act are printed as an appendix to this brief.

course and filed the tariff regulation in issue (R. 38), which reads as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff."

As the choice of the alternatives required, this regulation is the antithesis of a schedule of hotel surcharges. It deals with the hotel as a subscriber, not a connecting carrier, and requires it as a subscriber to comply with a specified condition in order to receive service. It does not fix any amount (or zero) as what a hotel may charge for hotel service or any thing else; it only prohibits a method of collecting such charges by imposing them on the use of the telephone service. It plainly means that a guest shall not be required to pay any additional charge, or surcharge (regardless of what it is for) as the *result* of having used the telephone service for which the hotel subscribes. It does not mean that the hotels may charge only so much for their hotel services in connection with toll calls, or, as the hotels contend, prevent them from seeking reimbursement of their expenses from their guests in some form, as, for example, by increasing room charges. Any method of reimbursement under which imposition of the charge is not dependent on the use of the telephone service is permissible.

The hotels do not rest their case on their construction of the tariff provision as a schedule of hotel charges. They contend further (Brief, pp. 46-55) that it is invalid as a regulation of the use of the service for two reasons:—

first, it is not the kind of regulation authorized or permitted by Section 203(a), and, second, it is in substance an arbitrary and capricious regulation of the hotel business beyond the power of the telephone companies to impose or the Commission to prescribe.

The first contention is briefly that the regulations specified in Section 203(a) are those "affecting" the carrier's charges; the regulation prohibiting hotel surcharges does not "affect" the amount of the telephone company's charges; consequently a violation of the regulation will not support a suit based on Section 203(a) (Brief, pp. 46, 47). The argument is highly technical and requires a construction of the statute too narrow to be tenable. It concentrates attention upon a few words of Section 203(a) and ignores the broad regulatory purposes expressed in this part of the Act. It also ignores the reference in Section 203(c) to the "privileges" which are permitted to be extended only "as specified in such schedule."* But upon a proper construction even the language of Section 203(a) upon which the hotels rely does not sustain their position.

The charges which Section 203(a) requires the carriers to publish in their tariffs are not mere amounts of money. They are charges for communication service and are not complete or intelligible unless, along with the amounts to be paid, there is a statement of what the payments are for. In order to file the charges for toll service furnished to hotel subscribers, this service must be sufficiently described in the tariffs to inform the public and the Commission of what the hotel subscribers get for their money. The regulation which prohibits hotels from imposing surcharges on

* See the text of this subsection in the appendix.

toll calls made by guests is a proper element in the description of the service because it is a limitation on the use that may be made of the service. It prevents the hotels from using the service as a means of collecting their charges for hotel service. The regulation consequently was properly filed even under the narrow wording of Section 203(a).

In their second argument against the validity of the tariff regulation (Brief, pp. 48-55), the hotels concede (Brief, p. 48) that a carrier may attach reasonable conditions to the furnishing of its service, but contend that this regulation so obviously transcends all possible bounds of reasonableness that it is invalid. Since the hotels admit that the determination of reasonableness is for the Commission in the first instance, and have a complaint raising that issue now pending before the Commission, their argument here must be that action of the Commission prescribing or approving the regulation would be so arbitrary and capricious as to be void.

The hotels suggest as a test of the validity of a regulation that it shall "affect the telephone companies in their business, and not the subscribers in theirs" (Brief, p. 49). The regulation in issue clearly meets the first half of this test, for it obviously affects the telephone companies in their business. Under the terms of this regulation a guest at the Shoreham Hotel upon making a long distance call has to pay the telephone company's tariff charge plus the federal tax. Without the regulation, upon making the same call, he would have to pay the tariff charge, the tax and perhaps as much as three dollars more. Whether the user has to pay that extra three dollars directly affects the business of the telephone company. Such additional charges are necessarily a deterrent to the use of the service and a

disturbing element in the relations of the telephone companies with the public. The investigation of the Commission in Docket 6255 (See R. 15, footnote) following a succession of court and commission cases, is sufficient evidence that hotel surcharges have been a continuing problem to the telephone industry and a continuing source of complaints to the regulatory authorities.

The second half of the test, *i.e.*, that the regulation must not affect the subscribers in their business, is obviously unsound. Regulations frequently restrict or "affect" the use which the subscriber can make of the service. If the subscriber uses the service in his business, then to that extent the regulation "affects" the subscriber's business. An example is the type of regulation which restricts the use of business service to the subscriber, his agents and representatives (*Cf.* R. 220). This prevents a tradesman from allowing his customers to use his telephone service and clearly "affects" the tradesman's business. Such regulations have nevertheless been sustained. *1015 Chestnut Street Corp.* v. *Bell Telephone Co. of Pennsylvania*, PUR 1931A, 19, 7 PUR (NS) 184 (1930, 1934); *Budd* v. *Southwestern Bell Telephone Co.*, 28 PUR (NS) 235 (Mo. P. S. C., 1939). Regulations of electric utilities which prohibit submetering or resale of public utility service obviously affect the business of the consumers but have not been condemned on that account. *Lewis* v. *Potomac Electric Power Co.*, 64 F. 2d 701 (App. D. C.); *Florida Power & Light Co.* v. *State*, 107 Fla. 217, 144 So. 657 (1932); *Sixty-Seven South Munn Inc.* v. *Board of Public Util. Com.*, 106 N. J. Law 45, 147 Atl. 735 (Sup. Ct. 1929) affd. 107 N. J. Law 386, 152 Atl. 920 (Court of Errors and Appeals, 1930), cert. den. 283 U. S. 828.

The surcharges at which the present regulation is directed are collected only when the toll service of the

telephone company is used. The amount of the surcharge is graduated according to the extent to which that service is used as reflected in the tariff charge of the telephone company, not according to how much hotel service is furnished in connection with the call. Thus, the regulation here in issue has a direct relation to the use of the telephone service and does not seek to regulate practices of the hotel except in that relationship. It removes a source of difficulty in the use of the telephone company's service by hotel guests, and goes no further than necessary to accomplish its purpose of keeping that service free from "toll gate" charges. The interest of the public and the telephone companies in preventing the hotels from imposing "toll gate" charges on access to telephone service has been pointed out. It simply cannot be said that a regulation to accomplish that result so transcends all bounds of reasonableness that it could not possibly be sustained by the regulatory authority and must therefore be stricken down by the Court as arbitrary and capricious.

II.

Injunction against the Telephone Companies was Properly Denied.

Counsel for the Commission contended below (R. 205, 206) that the telephone companies violated the tariff in at least a technical sense by continuing to render service to hotels which were making surcharges. The District Court held that the telephone companies had not violated the tariff and denied an injunction against them (R. 54). A brief review of this aspect of the case will show that the action of the District Court was correct.

The practice of the Washington hotels of imposing surcharges on toll calls was of long standing (R. 159). The regulation prohibiting surcharges was published and filed January 22, 1944 to become effective on February 15, 1944 (R. 121, 282). This constituted legal notice, but the telephone companies nevertheless brought the regulation directly to the attention of the hotels and endeavored to persuade them to comply with it (R. 121-126). These efforts were being continued when this suit was brought by the Government on February 19, 1944 (R. 2), four days after the tariff became effective. An interlocutory injunction under which the telephone companies would have been compelled to cut off service to the hotels was sought (R. 10). The hotels on their part brought suit in the District Court for the District of Columbia to set aside the order of the Commission pursuant to which the tariff was filed, and that suit is still pending (R. 67). Thus, since four days after it became effective, the validity of the tariff has been sharply contested and is now before this Court for final determination.

The telephone companies believe that the tariff is valid and must be complied with. As in the case of other regulations applicable to subscribers, compliance may be secured in various ways, as, for example, by explanation and persuasion, by litigation or by cutting off service. Statement of the regulation as a condition upon which service is rendered puts the hotels on notice that the latter, and most drastic, means of securing compliance may be used. It does not mean that it is the only means of securing compliance available to the telephone companies. In this case, the telephone companies did all in their power to secure compliance with the tariff by explanation and persuasion. While so

engaged, of course they did not start any litigation or cut off service. Within four days after the tariff became effective, and before the companies had completed their efforts to bring about compliance, the Government started this suit. Under the circumstances, the telephone companies can not be held to have violated the tariff, and an injunction against them was properly denied.

CONCLUSION.

It is respectfully submitted that the judgment of the District Court should be affirmed.

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John H. Ray,
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Of Counsel.

February 27, 1945.

APPENDIX.

The Communications Act of 1934, 48 Stat. 1064 (U. S. C., Title 47, Secs. 151 *et seq.*), provides *inter alia:*

"Sec. 203. (a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this Act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

"(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in par-

ticular instances or by a general order applicable to special circumstances or conditions.

"(c) No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule."

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No. 446

In the Supreme Court of the United States

OCTOBER TERM, 1944

AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER AND ROBERT O. SCHOLZ, A PARTNERSHIP, ET AL., APPELLANTS,

v.

UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court below was rendered orally, and is not reported. It appears in the record at pages 50–55.

JURISDICTION

The decision of the court below was announced on April 27, 1944, and its Findings of Fact, Conclusions of Law and Order for Permanent Injunction were entered on June 8, 1944 (R. 50–69). The

jurisdiction of this Court on appeal rests on the provisions of the Expediting Act approved February 11, 1903, as amended, and Section 238 (1) of the Judicial Code, as amended, as extended by Section 401 (d) of the Communications Act of 1934, as amended (47 U. S. C. 401 (d)).

QUESTIONS PRESENTED

All of the appellants operate hotels in the District of Columbia. When guests in these hotels make, or receive collect, any interstate or foreign long distance telephone calls, they are required to pay the hotels not only the tariff charges plus the federal taxes applicable to such calls but also an extra charge, or "surcharge", of approximately 10 per cent of the total of the tariff charge plus tax. This "surcharge" is retained by the hotels. Since February 15, 1944, the applicable tariffs of the American Telephone and Telegraph Company and The Chesapeake and Potomac Telephone Company on file with the Federal Communications Commission have provided that "message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff." The court below enjoined appellants from charging, demanding, col-

lecting or receiving the surcharges referred to above.

The questions presented are:

1. Whether the provisions of the Communications Act of 1934, as amended, apply to the surcharges in question, and whether the Federal Communications Commission has jurisdiction over such surcharges.

2. Whether the tariff in question is valid.

3. Whether the action of appellant hotels in collecting the surcharges in question constitutes a violation of the terms of the tariff in question.

4. Whether the action of appellant hotels in collecting the surcharges in question can be enjoined under the Communications Act of 1934, as amended.

STATUTE INVOLVED

The pertinent sections of the Communications Act of 1934, as amended (47 U. S. C. 151 *et seq.*), appear in the appendix.

STATEMENT

This suit was instituted on February 19, 1944, by the United States of America at the request of the Federal Communications Commission pursuant to Section 401 (c) of the Communications Act (47 U. S. C. 401 (c)), against American Telephone and Telegraph Company, The Chesapeake and Potomac Telephone Company, and twenty-seven hotels doing business in the District

of Columbia, to enjoin the collection of so-called service charges or surcharges which are made by hotels against their guests when they make, or receive collect, interstate or foreign long distance telephone calls. Appellants all operate hotels in the District of Columbia. The Chesapeake and Potomac Telephone Company is an operating telephone company furnishing telephone communication service within the District of Columbia, and, jointly with the American Telephone and Telegraph Company and other connecting carriers; furnishing interstate and foreign long distance telephone communication service from the District of Columbia to many other points throughout the United States and foreign countries. Both The Chesapeake and Potomac Telephone Company and American Telephone and Telegraph Company are common carriers within the meaning of the Communications Act of 1934, and as such a common carrier each is required by Section 203 (a) of the Communications Act (47 U. S. C. 203 (a)) to file with the Commission schedules showing all charges for itself and its connecting carriers for interstate and foreign telephone communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers, and showing the classifications, practices, and regulations affecting such charges. (R. 2, 56, 64.)

Commission Proceedings.—This suit arose as a result of a proceeding instituted by the Federal Communications Commission on January 6, 1942, for the purpose of determining whether the charges collected by hotels, apartment houses, or clubs in the District of Columbia in connection with interstate and foreign telephone communication on their premises are within the jurisdiction of the Commission under the Communications Act and what tariffs, if any, should be filed with the Commission showing such charges. These charges were not shown in any tariff on file with the Commission at the time the proceeding was instituted. The Chesapeake and Potomac Telephone Company and the American Telephone and Telegraph Company were made respondents to the proceeding. The order was served on the Hotel Association of Washington, D. C., Inc.—of which all the appellant hotels are members—and the order also provided that any hotel, apartment house, or club might appear and participate in the proceeding. No hotel as such participated in the proceeding, but the Hotel Association of Washington, D. C., Inc., did participate. (R. 2–4, 12–13, 46,-62.)

At the conclusion of the proceeding the Commission on December 10, 1943, issued a report (R. 14–36) in which it found that it does have jurisdiction under the Communications Act over the surcharges collected by hotels, apartment houses

and clubs, and that if such surcharges are to be collected at all, they must be shown in tariffs on file with the Commission. On the same day the Commission also issued an order (R. 37–38) directing the two telephone companies either to file appropriate tariffs with the Commission showing all charges collected by hotels, apartment houses, and clubs in the District of Columbia in connection with interstate and foreign telephone communications, or to file an appropriate tariff regulation containing specific provisions with respect to the conditions under which interstate and foreign telephone service would be furnished to hotels, apartment houses, and clubs.

On January 22, 1944, The Chesapeake and Potomac Telephone Company filed with the Commission a new tariff provision, effective February 15, 1944, which was concurred in by American Telephone and Telegraph Company, and which reads as follows (R. 9, 38, 62–63):

> Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff.

This suit.—The complaint in the instant suit was filed on February 19, 1944. A hearing was

held on plaintiff's motion for permanent injunction. There is no substantial dispute in the evidence. It appears from the testimony that telephone service is rendered to guests in appellant hotels by means of private branch exchanges—known as PBX's—to which are connected the extension stations located in the guest rooms. The PBX board, the extension stations, and the wiring are owned and installed by The Chesapeake and Potomac Telephone Company, but the hotels pay an installation charge and regular monthly charges for the equipment. The hotels also furnish the operators who operate the PBX boards. The hotels pay the telephone company for all outside telephone calls made through the PBX whether by the management or guests. The particular charges so paid are those set forth in the applicable tariffs on file with the Public Utilities Commission of the District of Columbia for local calls and in the tariffs on file with the Federal Communications Commission for interstate and foreign long distance telephone calls. (R. 98–99, 105–108, 117–118, 126–130, 137–138, 146.)

The hotels, in turn, charge their guests for outgoing calls, or incoming collect calls, made through the PBX.[1] For local calls a charge of ten cents is made, and for long distance calls the charge is the regular toll charge specified in the tariffs of

[1] No charge is made for intra-hotel calls through the PBX.

the telephone company, plus an extra charge which is called a service charge or surcharge. Each hotel has a different schedule of surcharges. In general, the amount of the surcharge varies with the amount of the tolls as set forth in the tariffs—it increases as the charges set forth in the tariffs increase—but there is no uniformity amongst the various hotels as to the amount of these added charges. In the case of the Shoreham Hotel, for example, the surcharge is 10 cents where the tariff charge plus the tax is $1.00 or less. Above that the surcharge is 10 percent of the tariff charge plus the tax with a maximum surcharge of $3.00. These rates apply on both prepaid and collect calls. A 10 cent charge is made for every long distance call which is not completed. (R. 149–155.) This suit is not concerned with the charges made for local calls, but rather with the surcharges which are made by the hotels on interstate and foreign long distance telephone calls.

As is pointed out in appellants' brief (pp. 36–39), there is also much evidence in the record concerning the many services which the hotels render to their guests in connection with the use of PBX facilities. It is the contention of the appellants that the surcharges are collected by the hotels as reimbursement for these services and that it is lawful for them to base the surcharges upon the use of interstate or foreign long distance telephone service.

The court below sustained the validity of the tariff[2] and held that it was violated by appellant hotels in collecting surcharges from their guests who make, or receive collect, interstate or foreign long-distance telephone calls. An injunction was accordingly issued against the hotels. The court declined to enjoin the telephone companies. However, it retained jurisdiction over the proceedings with respect to all defendants for the purpose of issuing such further injunction orders as might be necessary to effectuate its decision. (R. 66–67, 68–69.)

SUMMARY OF ARGUMENT

1. The court below properly held that the Communications Act extends to that portion of a long distance telephone call which takes place between the PBX board in a hotel and the instrument used by the hotel guest calling or called. The definition of "wire communication" in Section 3 (a) of the Act is comprehensive, and includes all transmission between the points of origin and reception of such transmission, as well as all instrumentalities, facilities, apparatus, and services incidental thereto. Acceptance of appellants' contention would substantially frustrate effective public regulation of charges for interstate and foreign communication service, for it

[2] The court declined to pass upon the justness or reasonableness of the tariff on the ground that that question was not for judicial consideration until "after a prior determination" by the Commission. (R. 66.)

would mean that appellants and others similarly controlling access to the use of telephones would be able freely to resell telephone service to the public and impose charges thereon additional to the charges specified in the telephone companies' filed schedules. Contentions similiar to appellants' have been consistently rejected for nearly thirty years by state courts and public utility commissions.

Being charges for telephone service, appellants' surcharges are required to be included in schedules filed under Section 203 (a) of the Act, which is not limited in its application to charges which accrue to the financial benefit of the carrier. In this case the telephone companies followed a permissible alternative method of treatment, by specifying in a tariff regulation, as a condition of service, that appellants should impose no charges additional to those of the telephone companies stated in the schedules. Tariff regulations of this nature are commonplace in telephone company schedules, and fall clearly within the operation of Section 203 (a). The condition cannot be deemed invalid as an attempt to regulate the hotel business, since the surcharges in question are based not upon hotel service but upon telephone service supplied to guests.

Appellants' authorities cited from the transportation field serve only to emphasize the weight which should be given by the courts to the Com-

mission's conclusion that the Act extends to the surcharges in question.

2. The argument that the tariff regulation should be construed so as not to apply to appellants' surcharges rests on a false premise. It is not denied that the appellants render many secretarial and other services to their guests, for which they are entitled to seek reimbursement in any appropriate manner. But the surcharges in question do not rest upon such hotel services, but are direct charges on the use of telephone service as such. In any event, the language and the history of the regulation preclude any substantial argument that it is inapplicable to appellants' surcharges.

3. The injunction was properly issued under Section 411 (a) of the Act against appellants notwithstanding the court's failure also to enjoin the telephone companies. Tariff schedules filed under Section 203 (c) bind carriers and subscribers alike, and may be enforced against either regardless of violation by the other. Moreover, if a violation by the carriers is prerequisite to injunction of the subscribers, the record facts indisputably establish such a violation, in that the telephone companies continued to supply telephone service to the appellants knowing that the condition stated in their tariff regulation was not being observed. It is doubtful that the court below intended to hold that no such violation had

been shown; but if it did, the holding was plainly erroneous as a matter of law, and if deemed relevant may and should be corrected by this Court.

ARGUMENT

Appellants in their brief rely upon three principal arguments as grounds for reversal of the lower court's decision. In the first place they maintain that the tariff in question is invalid since it pertains to matters not covered by the provisions of the Communications Act and hence not within the Commission's jurisdiction. Secondly, they argue that even if the tariff is valid, the action of the hotels in collecting surcharges from their guests in no way contravenes any of the terms of the tariff. Their final contention is that in any event there is no authorization in the Communications Act for the issuance of an injunction against appellant hotels in the absence of a finding of violation by the carriers. We discuss these three arguments in the order stated.

I

THE TARIFF IN QUESTION IS VALID.

Section 203 (a) of the Communications Act (47 U. S. C. 203 (a)) requires every common carrier to file with the Commission schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own

system, and between points on its own system and points on the system of its connecting carriers, and showing the classifications, practices, and regulations affecting such charges. Section 203 (c) (47 U. S. C. 203 (c)) provides that, once such schedules are filed, no carrier shall extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations or practices affecting such charges, except as specified in the schedules.

Pursuant to the above statutory requirement The Chesapeake and Potomac Telephone Company and American Telephone and Telegraph Company have filed with the Commission tariff schedules as required by the Act (R. 6–7). Among these schedules is the tariff involved in this case, which was filed on January 22, 1944, to be effective on February 15, 1944. The tariff reads as follows (R. 9, 38):

> Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff.

Appellants maintain (Br. 36–46) that this tariff is invalid because it does not relate to telephone communication within the meaning of the Communications Act, but is an attempt to regulate

their hotel business. They would apparently treat a telephone message as a commodity which is "shipped" by the telephone company as far as the PBX board and no farther; what takes place between the PBX board and the telephone used by the guest is to be regarded as hotel service and not telephone service (cf. Br. 48–55). Neither the Commission nor the telephone companies, they contend, may validly control the charges which hotels may in their business judgment choose to exact for such hotel service.

This argument, we submit, reflects an unrealistic and artificial view of a telephone conversation, and one which is completely rejected by the Communications Act. Section 3 (a) of the Act (47 U. S. C. 153 (a)) defines "wire communication"—of which telephone communication is a part—as follows:

> "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

It is difficult to imagine how a statutory definition could more clearly cover the situation in-

volved in this case.[3] The definition comprehends within "wire communication" the transmission of all signals and sounds of any kind between the points of origin and reception of such transmission, and includes all instrumentalities, facilities, apparatus and services incidental to such transmission. No argument based upon the technical contractual relationships between the hotels and the telephone companies can obscure the plain fact that the point of origin of a telephone call is the telephone instrument which the hotel guest uses, and the point of reception is the telephone instrument used by the person to whom he talks, and vice versa. The PBX system and its operators, whether or not supplied or controlled by the hotels, are instrumentalities, facilities, apparatus and services incidental to the transmission of his message, no less than are the central exchange system, wires, instruments and services supplied and controlled by the telephone companies themselves.

[3] Significantly, the tariffs of The Chesapeake and Potomac Telephone Company and American Telephone and Telegraph Company in substance embody this definition. The tariffs read as follows (R. 209, 210):

"Message toll telephone service is that of furnishing facilities for telephone communication between telephones in different local service areas in accordance with the regulations and system of charges specified in this tariff. *The toll service charges specified in this tariff are in payment for all service furnished between the calling and called telephones.*" [Italics supplied.]

If appellants' contention to the contrary were sustained, effective regulation of interstate and foreign telephone rates would be substantially impaired. Under appellants' theory the Commission could prescribe rates on long distance calls to and from the PBX board, but neither the Commission nor any other agency charged with the regulation of telephone rates could prevent any amount of additional charges being assessed against the guest making or receiving the call. If this were permitted, it would be squarely contrary to the underlying policy of the Communications Act, for as the Commission stated in its Report (R. 26):

> If the collection of such surcharges were not subjected to regulatory control, a subscriber, or anyone else other than the telephone company, who is permitted by the telephone company to control access to the use of a telephone, could freely resell interstate and foreign telephone service, imposing any charges of his own on such use. This would mean at least a partial nullification of effective public regulation of charges for interstate and foreign communication service, for there would then be a serious hiatus in the safeguards against excessive and discriminatory charges to the using public. A hiatus of this nature would be squarely contrary to the intention evidenced in the Communications Act of 1934 that there be comprehensive regulation of

charges for interstate and foreign communication service.

The contentions which appellants make here are not new. They go back at least to 1915. Consistently since that time state courts and commissions which have considered the problem of surcharges similar to those in question here have concluded that such surcharges are subject to regulation by public utility commissions as part of the regulation of public utility telephone service. *Re New York Telephone Co.*, 26 P. U. R. (N. S.) 311 (N. Y. 1938), 30 P. U. R. (N. S.) 350 (N. Y. 1939); *People ex rel. Public Service Commission* v. *New York Telephone Co.*, 262 App. Div. 440 (1941), affirmed without opinion, 287 N. Y. 803; *Hotel Pfister* v. *Wisconsin Telephone Co.*, P. U. R. 1932 B, 8, P. U. R. 1933 C, 479 (Wis.); *Hotel Pfister, Inc.*, v. *Wisconsin Telephone Co.*, 203 Wis. 20 (1930); *Jefferson Hotel Co.* v. *Southwestern Bell Telephone Co.*, 15 P. U. R. (N. S.) 265 (Mo. 1936); *Re Hotel Marion Co.*, P. U. R. 1920 D, 466 (Ark. 1920); *Connolly* v. *Burleson*, P. U. R. 1920 C, 243 (N. Y. 1920); *Re Hotel Telephone Service and Rates*, P. U. R. 1919 A, 190 (Mass. 1918); *Hotel Sherman Co.* v. *Chicago Telephone Co.*, P. U. R. 1915 F, 776 (Ill. 1915).[4]

[4] In related fields of gas and electricity distribution, the courts and commissions have also sustained tariff regulations prescribing the conditions under which gas and electricity are furnished to consumers. The problem involved in these fields is concerned with remetering. Apartment houses, commer-

We submit, therefore, that there is no merit in the contention that the charges dealt with by the tariff in question are charges for hotel service and not for telephone service, and that the tariff is for that reason invalid in so far as it prohibits such charges. But appellants argue, as an alternative, that even if the charges are for telephone services, they are not charges of the carrier "for itself and its connecting carriers", as contemplated and required by Section 203 (a) of the Act, and therefore are not properly part of a tariff filed under that section, and cannot bind anyone. It may be conceded that the "surcharges" imposed by the hotels are not charges "for" the carrier, in the sense of being paid over to or received by the carrier, and there is no con-

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cial buildings, etc., have from time to time attempted to buy gas or electricity at wholesale rates and retail it to their tenants by remetering it. The gas and electricity companies have combatted this by adopting tariffs forbidding remetering. In other words, they have furnished service to the building owners on condition that the gas or electricity should not be resold. Tariffs of this type have uniformly been upheld by the courts and commissions which have considered the problem. *Lewis* v. *Potomac Electric Power Co.*, 64 F. 2d 701 (App. D. C.); *Karrick* v. *Potomac Electric Power Co.*, P. U. R. 1932 C, 40 (D. C. Sup. Ct. 1931); *Florida Power & Light Co.* v. *State*, 107 Fla. 317 (1932); *Sixty-Seven South Munn* v. *Board of Public Utility Commissioners and Public Service Electric & Gas Co.*, 106 N. J. Law 45 (Sup. Ct. 1929), affirmed, 107 N. J. Law 386 (Court of Errors and Appeals 1930), certiorari denied, 283 U. S. 828; *Public Service Commission* v. *J. & J. Rogers Co.*, 184 App. Div. 705 (N. Y. 1918); *People* v. *Public Service Commission*, 191 App. Div. 237 (N. Y. 1920), affirmed, 230 N. Y. 574 (1920).

tention made here that the hotels are "connecting carriers."[5] But the surcharges are, as we have shown, charges for telephone service supplied by a carrier, and they are imposed on the use of that service with the knowledge and acquiescence of the carrier. To exclude such charges from the operation of Section 203 (a) merely because they accrue financially to the hotels rather than the carrier requires an unnecessarily pedantic and, we believe, unsound reading of the section. The Communications Act was, in the language of the Commission's Report (R. 26), designed to afford "safeguards against excessive and discriminatory charges to the using public," and unless its language compels otherwise it should be construed to that end. The words "for itself" in Section 203 (a) are not, we submit, so precise and inelastic as to confine the operation of the section within limits set by technical doctrines of agency; their function in their context is, rather, to specify the services in respect of which charges must be included in filed schedules. In other words, the section requires the inclusion in a carrier's schedules of all charges for such carrier's service and the service of its connecting carriers, whether ex-

[5] Neither the Commission in its Report and Order of December 10, 1943 (R. 14, 37), nor the court below in this suit, made any finding on the question whether the hotels are "connecting carriers" within the meaning of the Act, and we have made, and make, no contention to that effect in this suit. Appellants' argument (Br. 32–35) that they are not "connecting carriers" is therefore beside the point.

acted by the carrier itself or by others with its knowledge and acquiescence. The charges for telephone service imposed by the hotels in this case fall within the section regardless of whether the hotels in imposing the charges do so for their own benefit or as agents for the carriers.

Moreover, it should be recalled that the schedules required by Section 203 (a) must reflect not only charges for telephone service, but also "the classifications, practices, and regulations affecting such charges." Even if the phrase "all charges for itself" is given the restrictive construction suggested by the appellants, that construction cannot avail them here. For the schedule in question is one which plainly relates to the telephone companies' own charges. The portion of the schedule the validity of which is here challenged is a regulation specifically affecting the telephone companies' own service which they supply to the hotels. It is the telephone companies' service that is supplied, and the telephone companies' charges that are fixed, upon the condition that hotel subscribers shall make no additional charges upon the use of the service by guests. Such regulations, defining the rights, privileges, and restrictions attaching to a particular type of service offered, are a commonplace of telephone tariffs (see, e. g., R. 219–222), and form as proper a part of the tariff as does the schedule of charges itself. A regulation prohibiting hotels from making surcharges for telephone messages

from instruments "accessible to the general public or to guests, tenants or members generally" has been a part of the filed tariff of The Chesapeake and Potomac Telephone Company for more than 25 years (R. 21, 222). Such regulations, including the regulation here challenged, fall squarely within Section 203 (a), however strictly that section be construed.

Recognizing that binding conditions upon the use of telephone service supplied by a carrier may be included in a schedule filed under Section 203 (a), the appellants seek to avoid this particular condition on the ground (Br. 46–55) that it purports "to regulate the charges of other persons wholly without the jurisdiction of the regulatory body." The condition, appellants suggest, should be held judicially unenforceable because it falls among those "obviously invalid" regulations "which affect, not the carrier in its business, but only the subscriber in its business" (Br. 48–49).

The regulation does affect the subscriber in the sense that it prevents the subscriber from imposing for its own benefit a charge for the use of a regulated public service. But the impropriety of such an impact is not to be established by generalizations, nor by hypothetical instances of regulations designed to affect business practices unrelated to the use of telephone service. Appellants suggest (Br. 49) that if this regulation is held valid the telephone companies would be enabled to deny service to a department store

whose sales practices they disapproved, or to a law office whose fees they deemed excessive. At the same time appellants concede (Br. 48) that a regulation might be proper which had for its purpose the prevention of abuse of the carrier's service and facilities. That, we submit, is a purpose of the regulation here under review. There is here no effort to control hotel business, even to the extent of preventing the hotels from recovering such expenses, secretarial or otherwise, as they may incur in making available to their guests the telephone companies' interstate and foreign telephone service. Such expenses may be recovered in any lawful manner which appeals to the business judgment of the hotels' managers. Whether the recovery is by means of increased room rates, by flat service charges on each guest, by fixed fees for each service rendered, are matters beyond the reach of the regulation and beyond the concern of the Commission. The thrust of the regulation is merely at the practice whereby the hotels, in the guise of reimbursing themselves for hotel services, in fact subject the use of interstate and foreign telephone service to charges not contained in the published effective tariffs for such service.

The cases cited by appellants (e. g., Br. 42–44, 53–54) involve factual problems far different from any presented here, and are helpful neither by authority nor by analogy. While procedurally the regulation of railroad rates by the Interstate

Commerce Commission bears many resemblances to the regulation of interstate and foreign telephone communication rates by the Federal Communications Commission, there is obviously no such identity in the conditions and problems of the two industries as to call for the indiscriminate application of decisions in one field to cases arising in the other. Moreover, in each of the decisions of this Court relied on by the appellants as especially pertinent (e. g., *Acme Fast Freight* v. *United States,* 30 F. Supp. 968 (S. D. N. Y.), affirmed *per curiam,* 309 U. S. 638 (freight forwarders not engaged in operations on a public highway); *United States* v. *Am. Tin Plate Co.,* 301 U. S. 402 (spotting of cars on industrial plant tracks); *Swift & Co.* v. *United States,* 316 U. S. 216 (yard services by stockyards companies following unloading of livestock at delivery pens)) the question arose upon a determination of the Interstate Commerce Commission that the particular activity involved did not constitute transportation within its jurisdiction, and the action of that Commission in so determining was upheld as a determination of fact supported by the record before it. The deference shown by this Court to such prior factual determinations by the Interstate Commerce Commission within its area of special competence furnishes no argument for disregarding in this case the comparable factual determination of the Federal Communications Commission in its specialized sphere. Following

a comprehensive investigation authorized by the Act the Communications Commission has concluded that service between the PBX board and the telephone instrument used by the person calling or called is an integral part of interstate and foreign telephone communication covered by the Act, and that charges relating to that part of the communication are therefore properly to be included in schedules filed under Section 203 (a). No authority is cited by appellants which would either require or support rejection of this conclusion.

II

THE TARIFF IN QUESTION APPLIES TO APPELLANTS' SURCHARGES

Although for the most part assuming that the tariff in question, if valid, applies to their surcharges (see Br. 32), appellants argue in Point VI of their brief (Br. 61–63) that a proper construction of the tariff would in any event, on the evidence in this case, exclude their charges from its operation. In particular, it is suggested that the tariff, if construed to prohibit their surcharges, amounts to a regulation of charges for hotel service, and that the invalidity of such a regulation is so patent as to dictate judicial selection of some alternative meaning for the tariff in order to save it.

The premise of this argument assumes the major point at issue in the case. Certainly, the record shows that the hotels render services, secre-

tarial and otherwise, in connection with interstate and foreign telephone communication by their guests. But it does not follow that a prohibition of the surcharges involved here is an effort to regulate hotel services. Whatever may be the cost of the hotel services rendered, the surcharge is placed directly on the use, not of hotel service, but of telephone service. There is no dispute in the evidence that the surcharge is collected when interstate and foreign telephone service is used, and only when such service is used. There is likewise no dispute that the surcharge is collected whether or not the guest needs or uses any of the hotel services offered, and that the amount of the surcharge is controlled not by the amount or cost of hotel service involved but by the tariff charge, plus federal taxes, for the telephone service. The surcharges bear no relation whatsoever, in either amount or incidence, to the furnishing of secretarial or other hotel service. They are direct charges on the use of telephone service as such, and cannot be exculpated merely by assertion, or proof, that business judgment finds such charges appropriate as a means of reimbursement for hotel service expenses incurred for the convenience of guests. The suggestion (Br. 62) that on the Commission's theory a hotel could not charge for a hotel room having a telephone in it is a *reductio ad absurdum*.

Moreover, even if there were merit in appellants' claim that the regulation invades the prov-

ince of hotel management, we submit that the regulation cannot in any event be saved by construction. It must stand or fall as what it is—a provision expressly drawn to prohibit the very surcharges involved here. We see no ambiguity in the regulation as applied to the record facts, but if there were ambiguity it would be resolved by reference to the regulation's genesis. The Commission after investigation ordered the telephone companies either to show the hotels' surcharges in their tariff schedules, or to specify the conditions upon which telephone service was furnished to the hotels. The telephone companies followed the latter course, and conditioned the furnishing of telephone service upon abolition of the surcharges. The reasonableness of the condition may be—as it is being (see App. Br. 13)—contested in other appropriate proceedings; its validity may be—as it is being—contested here; but its meaning, in the light of its background, is not subject to serious controversy.

III

THE COURT BELOW PROPERLY ISSUED AN INJUNCTION AGAINST APPELLANT HOTELS

This action was instituted under Section 411 (a) of the Communications Act, which reads as follows:

> In any proceeding for the enforcement of the provisions of this Act, whether such proceeding be instituted before the Commis-

> sion or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

The appellants concede that they are "interested in or affected by the charge, regulation, or practice under consideration," and therefore that it was "lawful to include [them] as parties in this proceeding" (Br. 63). However, they point to the fact that Section 203 (c) of the Act prohibits only *carriers* from making charges or extending privileges inconsistent with published tariffs, and to the further fact that sanctions under Section 203 (e) for failure to comply with Section 203 (c) run only against *carriers;* and from these sections they deduce that they, being (as they contend) neither connecting carriers nor agents of carriers, are not subject to injunction under Section 411 (a) except upon a finding of violation by the carrier.[6]

[6] It is not entirely clear whether appellants go even farther, and contend that the actual issuance of an injunction against the carrier is a prerequisite to relief against parties other than the carrier. While their argument (Br. 63–64) is in general directed to the point that no decree could properly

No contention is made in this case that appellants are "connecting carriers" within the meaning of the Act;[7] and we accept for present purposes the finding of the court below (R. 63) that in extending interstate and foreign telephone service to their guests they are not acting as the agents of the telephone companies.[8] But it by no

be entered against them in the absence of a *violation* by the telephone companies, they state (Br. 64) that the purpose of Section 411 (a) is "to afford complete assurance against repetition or continuance [of a violation by a carrier] by enjoining the carrier and also enjoining the subscribers or other parties involved"; and in their Summary of Argument (Br. 24) they assert that no decree may be entered against parties other than carriers "except to the extent that a decree is entered against the carriers." We dispose of this suggested construction of the Act, *infra*, pp. 31–33.

[7] See footnote 5, *supra*. Neither the Commission nor the court below made any finding that appellants were either carriers or connecting carriers. Appellants argue (Br. 35) that even if they were connecting carriers the tariff would be unenforceable against them without their consent. In so arguing, they overlook the fact that under Section 203 (c) it would be unlawful for them, as carriers, to participate in communication unless schedules had first been filed and published in accordance with the Act. If, as connecting carriers, they declined to accept the telephone companies' schedules, their surcharges would still be unlawful in the absence of schedules filed by them or on their behalf.

[8] The Commission in its Report found the hotels to be agents of the telephone companies (R. 29–30). However, appellants are in error in asserting (Br. 11) that the Commission "had based its decision upon its finding that the hotels were the agents of the telephone company and for this reason had ruled" that the surcharges were unlawful unless covered by schedules. The Commission explicitly placed its decision upon alternative grounds, saying (R. 30):

"* * * although the Commission has found and con-

means follows from these propositions that upon the proved facts appellants were not properly subject to injunction.

In the first place, we do not accept the assumption that injunctions may be issued under Section 411 (a) against others than carriers only when necessary to aid in the enforcement of the Act against carriers as such. Though Section 203 (c) speaks in terms only of carriers, we do not believe that it was intended to supersede the general principle of rate regulation that once a valid tariff is filed it has the force and effect of law, and must be complied with by both carrier and customer until changed or set aside. *United States* v. *Wabash R. Co.*, 321 U. S. 403; *Crancer* v. *Lowden*, 315 U. S. 631; *Lowden* v. *Simonds etc. Grain Co.*, 306 U. S. 516; *Director General* v. *Viscose Company*, 254 U. S. 498; *Pennsylvania R. R. Co.* v. *International Coal Co.*, 230 U. S. 184; *Robinson* v. *Baltimore & Ohio R. Co.*, 222 U. S. 506. In the light of this principle, Section 411 (a) may, we believe, be taken as supplementing Section 203 (c) to the extent of authorizing judicial action to

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cluded that the hotels, apartment houses, and clubs are agents of respondents, the Commission is also of the opinion that a permissible alternative means of regulation of this matter is a tariff regulation specifying proper conditions upon which service is provided by respondents to hotels, apartment houses, and clubs. *Regardless of the agency relationship found to exist*, each hotel, apartment house, and club receives P. B. X. service as a subscriber, and as such, it can receive the service only subject to such proper tariff conditions as are attached." [Italics supplied.]

bring about compliance with a filed tariff by all persons "interested in or affected" thereby, whether or not they are, or are acting for, carriers upon whom the express obligations of Section 203 (c) are placed. For the purposes of this phase of the argument we assume, as do appellants, that the tariff regulation under review is valid as applied to appellants' surcharges. If it is, then it would seem that Section 411 (a) authorizes injunctive process against the appellants as subscribers to enforce compliance on their part with the tariff, regardless of any showing of failure of compliance upon the part of the carriers themselves.

But we do not need to, and do not, rest upon this construction of Section 411 (a). The record, we believe, establishes beyond possibility of doubt that the telephone companies themselves were engaged in a violation of their own schedule, and of the Act, and would have been subject to injunction had the court below, in its equitable discretion, seen fit to enjoin them. Their schedule—the validity of which they affirmatively supported (see R. 200)—provided expressly that message toll service was supplied to hotels "upon the condition that use of the service by guests * * * shall not be made subject to any charge by any hotel * * * in addition to the message toll charges of the Telephone Company" (R. 282). They were fully cognizant that the hotels, notwithstanding this condition, were continuing to

exact surcharges from their guests upon the use of interstate and foreign telephone service (R. 52). Nevertheless, they continued to supply telephone service in violation of the condition of their own schedule. Conditions in a tariff schedule respecting the quantum or type of service furnished to subscribers are as binding upon the carriers as are the tariff charges themselves. *United States* v. *Wabash R. Co.*, 321 U. S. 403; *United States* v. *Am. Tin Plate Co.*, 301 U. S. 402; *Goodman Lumber Co.* v. *United States*, 301 U. S. 669; *A. O. Smith Corp.* v. *United States*, 301 U. S. 669; *United States* v. *Pan American Corp.*, 304 U. S. 156.[9] Section 411 (a) of the Act, like Section 2 of the Elkins Act[10] from which it was drawn without material change, by its language plainly contemplates proceedings for the enforcement of "regulations" and "practices" as well as charges.

It is true that no injunction was in fact issued against the telephone companies. But under even the strictest construction of Section 411 (a) the right of a court to enjoin other interested parties from violation of the Act is not conditioned upon the actual issuance of an injunction against the car-

[9] The court below expressly found (R. 66): "This tariff regulation is binding both on defendant telephone companies and on each of the defendant hotel companies."

[10] 32 Stat. 848; 49 U. S. C. 42. For the purpose of the provision as placed in the Elkins Act, see H. Rep. No. 3765, 57th Cong., 2d Sess., pp. 5–6, reporting favorably S. 7053, 57th Cong., 2d Sess.

rier.[11] Section 411 (a) authorizes the making of orders and decrees against additional parties "in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers"—not merely to the same extent as such orders or decrees *are* issued against carriers. On this record we believe it clear that an injunction against the carriers was "authorized by law", and could properly have been issued by the court below, as was done in the similar case of *United States* v. *Hotel Astor, Inc.* (S. D. N. Y., decided August 31, 1944; Statement as to Jurisdiction pending in this Court, No. 823, this Term). Equally clearly it was within the discretion of the court below to decline, as it did, to issue an injunction against the telephone companies (see *Hecht Co.* v. *Bowles,* 321 U. S. 321); for the true controversy was between the United States and the hotels, and an injunction against the telephone companies would have added nothing if the process of the court were obeyed by the hotels. This was recognized by the United States at the trial, and the request for an injunction against the telephone companies was not strongly pressed.[12] But whether or not such

[11] As stated above (footnote 6), it is not entirely clear whether appellants dispute this proposition.

[12] See statement of counsel for the United States (R. 206): "An injunction against the hotels, which retained jurisdiction against the telephone companies in case it became necessary to issue an injunction against them to enforce your order, would be all right so far as we are concerned."

an injunction was in fact issued is immaterial so long as such an injunction, on the basis of the record, would have been authorized by law. The record, we submit, establishes that such an injunction would have been authorized by law.

Appellants stress the fact that the court below not only failed to issue an injunction against the telephone companies, but also found as a fact that those companies were not violating the Act. We question that this is an accurate analysis of the judge's opinion and findings. True, the court in its conclusions of law stated (R. 66) that the "telephone companies are not violating said tariff regulation by any act or omission of their own, and are not responsible for the violations being committed by the hotels." This, however, may mean no more than that the court, like the Government, regarded the hotels rather than the telephone companies as the primary, active violators, and the ones against whom an injunction should issue in the first instance. Such a construction is consistent with the court's statement in its oral opinion (R. 54) that "it could enjoin these telephone companies if the facts of the case required", and with the court's retention of jurisdiction over the proceeding "so that if any of the defendant hotels make charges in violation of the foregoing injunction the Court may enjoin the defendant telephone companies from rendering interstate and foreign message toll service to such

hotels" (R. 67). We believe that the court's findings and conclusions, read as a whole, mean no more than that the telephone companies were engaged in no such violation of the Act as would call upon the court, as a court of equity, to enjoin them in the absence of further developments.

If we are wrong in our construction of the court's findings and conclusions, the appellants' contention must, we believe, still fail. For assuming the validity of the tariff regulation (an assumption made by both sides for purposes of this point of the argument), a finding that the telephone companies were not violating the regulation is, on the undisputed facts, a plain error of law which may and should be corrected by this Court. The regulation stated a condition of service; the condition, to the knowledge of the telephone companies, was not complied with; nevertheless the telephone companies continued to supply service. The violation is, we believe, unquestionable as a matter of law, and if the court below is deemed to have held to the contrary, its error may and should be corrected by this Court. That the United States took no appeal is of no significance; correction of the error is sought, not as a basis for injunction against the telephone companies—which was denied without objection by the United States (R. 206; see footnote 12, *supra*)—but as a basis for sustaining the injunction against the hotels, which was granted. Error

in the findings or conclusions of the court below of course afforded the United States no ground for appeal from the judgment in its favor (*Lindheimer* v. *Illinois Tel. Co.*, 292 U. S. 151; *New York Telephone Co.* v. *Maltbie*, 291 U. S. 645; *Public Serv. Comm'n* v. *Brashear Lines*, 306 U. S. 204; *Flournoy* v. *Wiener*, 321 U. S. 253); and if the judgment below is proper on correct principles it may stand regardless of any erroneous conclusion of law by the court. *Helvering* v. *Gowran*, 302 U. S. 238; *Helvering* v. *Pfeiffer*, 302 U. S. 247; *Riley Co.* v. *Commissioner*, 311 U. S. 55; cf. *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 88.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted.

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MARCH 1945

APPENDIX

The pertinent provisions of the Communications Act of 1934 are as follows:

SEC. 3 (a) "Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

SEC. 203. (a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this Act when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such

public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the pro-

visions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

Sec. 401. (a) Upon the request of the Commission it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States.

(d) The provisions of the Expediting Act, approved February 11, 1903, as amended, and of section 238 (1) of the Judicial Code, as amended, shall be held to apply to any suit in equity arising under Title II of this Act, wherein the United States is complainant.

Sec. 411. (a) In any proceeding for the enforcement of the provisions of this Act, whether such proceeding be instituted before the Commission or be begun originally in any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER and ROBERT O. SCHOLZ, a Partnership, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, *et al.*

APPELLANTS' PETITION FOR REHEARING

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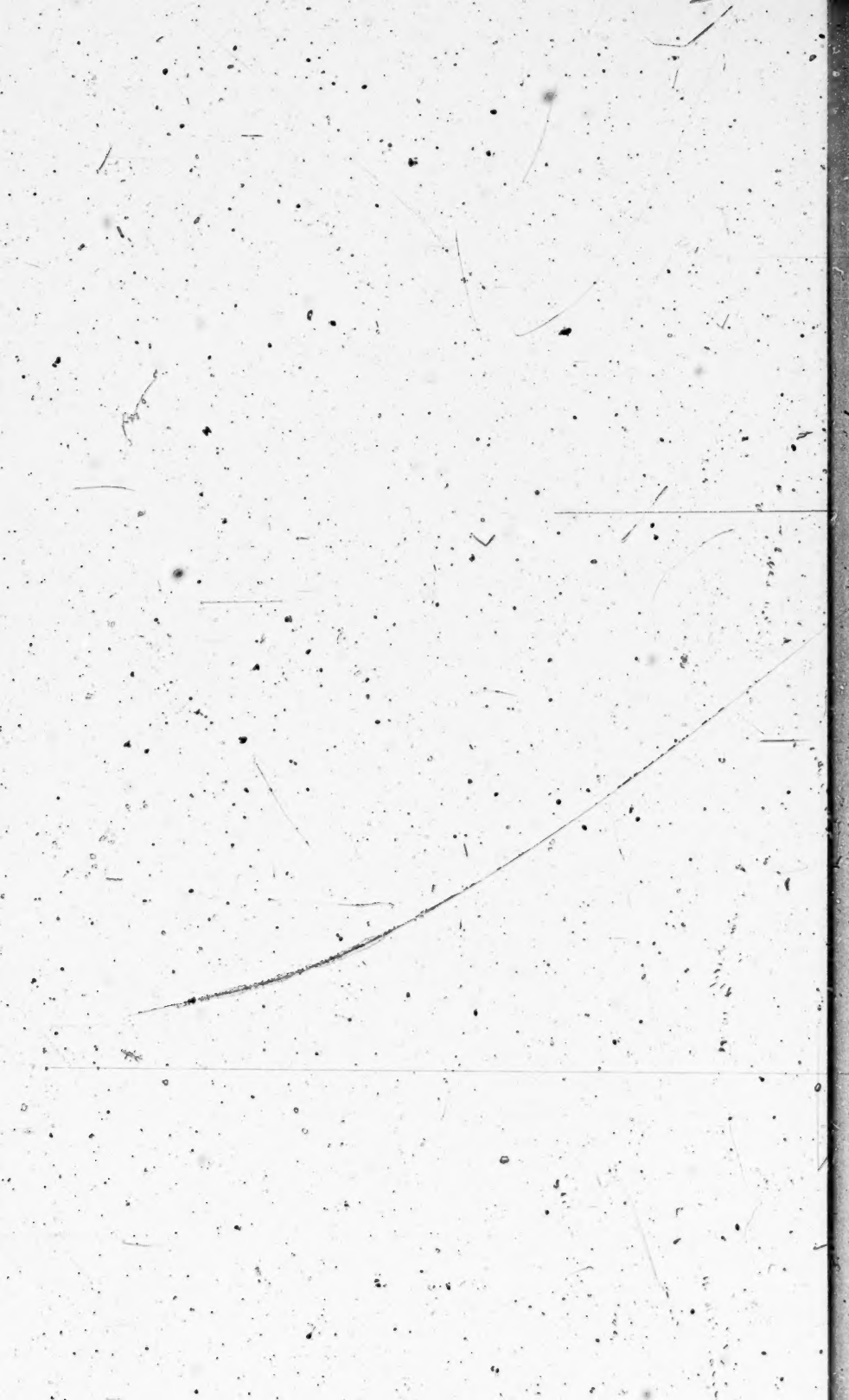

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APPELLANTS' PETITION FOR REHEARING

Come now the above-named petitioners and present this their petition for a rehearing of the above-entitled cause, and in support thereof, respectfully show:

The case was argued on March 9 and 12, 1945. The opinion of this Court on which the rehearing is requested was written by Mr. Justice JACKSON and handed down on May 21, 1945. Mr. Justice BLACK and Mr. Justice DOUGLAS took no part in the consideration or decision of the case.

As grounds for the rehearing sought, petitioners allege: (1) that this Court incorrectly rested its conclusions upon the provisions of Sections 201 and 202 of the Communications Act of 1934, as amended, whereas this proceeding was instituted at the request of the Federal Communications Commission, and at its election, solely under the provisions of Section 203 of said Act and was brought to enjoin an alleged violation of that section only (R. 4, 8); (2) the Court

failed to give proper effect to the language of Section 203; and (3) the Court failed to decide questions whose determination is essential.

It was alleged by the Commission and decided by the court below that the petitioners were guilty of a violation of Section 203 in failing to discontinue service charges to their guests in conformity with a tariff provision filed by the telephone companies, reading as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club, in addition to the message toll charges of the Telephone Company as set forth in this tariff."

The Court Quoted and Applied the Wrong Section of the Act

The Court's opinion seems to proceed from the impression, stated on page 6* of the opinion, that the position of the hotel appellants rests upon the claim "that the regulation in question is unlawful because it is unreasonable." It is perhaps this impression which caused the Court to rest its opinion upon the provisions of Sections 201 and 202, which require that the charges, practices, classifications, regulations, facilities or services of common carrier wire communication carriers shall be just, reasonable and non-discriminatory. This in turn has probably led the Court to its conclusion that the hotels must seek their relief from the regulation by complaint to the Commission.

The contentions of the hotel appellants in so far as this suit is concerned do not, however, rest upon the claim that the regulation is unreasonable. Whether reasonable or unreasonable, it is submitted that the regulation is not one which by Section 203 is to be published in a tariff filed with

* All references to the opinion are to the page of the pamphlet opinion.

the Commission, and non-observance of which constitutes a violation of the very precise and rather limited provisions of that Section.

The provisions of Section 203 deal only with the filing of and compliance with tariffs. It is the only section of the Act which contains any reference as to the type of tariffs which may be filed with the Commission or the type of classifications, practices or regulations which such *filed* tariffs may contain.

More specifically Section 203(a) requires filing with the Commission by a common carrier of

> "schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication * * * and showing the classifications, practices, *and regulations affecting such charges.*" (Italics ours.)

Section 203(b) provides that no change shall be made in the "charges, classifications, regulations or practices which have been so filed" except under certain circumstances; and Section 203(c) provides that no carrier shall engage in such communication unless the schedules have been filed, and that no carrier shall

> "employ or enforce any classifications, regulations, or practices *affecting such charges*, except as specified in such schedule." (Italics ours.)

It therefore appears clearly that as far as classifications, practices and regulations are concerned, the entire section under which this suit is brought relates only to those classifications, practices and regulations "affecting such charges", *i. e.*, the charges of the common carriers who were appellees here.

Appellant hotels argued that the prohibition against service charges in the tariff quoted above did not *affect* the carriers' charges. Although this appeared to be the most important issue in the case, the opinion made no attempt to interpret the phrase "affecting such charges" and made no finding as to whether the prohibition

against service charges by the hotel appellants in the telephone companies' tariff fell within the scope of the phrase last quoted. Probably for the reasons previously stated, it assumed that the Commission's powers relating to this suit under Section 203 were to be determined by reference to, and were co-extensive with the authority under the provisions of Sections 201(b) and 202, which, however, employ quite different and much broader language. This conclusion of the Court will be found on page 5 of the opinion. It there states:

> "The supervisory power of the Commission is not limited to rates and to services, but the formula oft repeated in the Act to describe the Commission's range of power over the regulated companies is 'charges, practices, classifications, and regulations *for and in connection with such communication service.*'" (Italics ours.)

Although the language last quoted is referred to as "a formula oft repeated", it does not once appear in the provisions of Section 203, under which this suit is brought.

The provisions of Sections 201 and 202 require briefly—201(b), that all charges, classifications, practices and regulations shall be just and reasonable; and 202(a), that it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, etc., "for or in connection with like communication service". The phrase "for and in connection with such communication service" (Section 201) and the similar phrase in Section 202 are much broader in scope than the phrase in Section 203(a) and (c) "affecting such charges". Almost any regulation relating to supplying telephone service would be "for and in connection with such communication service"; whereas, not every such regulation would be one "affecting such charges".

The opinion of the Court, at page 5, after referring to the provisions of Section 201(b) of the Communications Act, providing that

"All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable,"

says

"All of these must be filed with the Commission in the form it prescribes,"

referring to Section 203 of the Act. As a matter of fact, Section 203 of the Act does not provide that *all* charges, classifications, practices and regulations shall be filed with the Commission, but only that charges *of the carriers* and classifications, practices and regulations affecting *such charges* must be so filed. Indeed, there are many practices and regulations made in connection with charges of carriers which, although they fall under the requirement of reasonableness, are not required to be filed as a part of a tariff. As an example of the kind of practices and regulations that are not filed as a part of a tariff, the Court's attention is directed to Telephone Company Exhibit No. 6 (R. 284) (the form of contract for service offered by the telephone companies to hotels) which was not a part of the tariff, but which plainly falls within the requirement of justness and reasonableness in respect of its provisions.

The Issue Is Not One of Reasonableness

There is no provision in Section 203 which relates in any way to the reasonableness or unreasonableness of the tariff sought to be enforced. The section includes only regulations which affect the charges of the telephone carrier. By basing its conception of the Commission's authority to bring this suit on Sections 201 and 202, the Court fell into the error of concluding that the question before it was one of reasonableness rather than jurisdiction to enforce the Act under Section 203. The hotel appellants in this Court contended that the tariff provision was invalid because it was not a regulation affecting the carriers' charges required to be filed under Section 203 of the Act, departure from

which could become the basis of a suit for enforcement under that section and Section 401(c) of the Act.

The Restriction Against Service Charges Does Not "Affect" the Carriers' Charges

Since the Court based its conception of the Commission's powers on a section not in issue in this suit, it also arrived at the further erroneous conclusion that it was of no consequence whether the hotels were agents or subscribers or whether the relationship fitted into some common law category. Since Section 203 relates solely to the charges of the carriers and the classifications, practices and regulations affecting such charges (*i. e.*, the carriers' charges), the hotels' charges could only become the subject of scrutiny if they were made by the hotels as agents for the carriers and consequently became the carriers' charges. The determination whether the hotels were agents or subscribers of the telephone companies did not, therefore, involve merely an "attempt to fit the regulated relationship into some common-law category" (Opinion, p. 7). Upon this determination depended whether or not the regulation *affected* the charges of a carrier for wire communication service and therefore came within Section 203.

The question of whether the restriction against service charges by the hotels is one "affecting" the carriers' charges is dealt with in the briefs filed by the hotels (Appellants' brief, pp. 46, *et seq.*; Appellants' reply brief, pp. 11, 12, 13) and requires no further elaboration here. The telephone companies argued (brief, pp. 6 and 7) that

> "The regulation which prohibits hotels from imposing surcharges on toll calls made by guests is a proper element in the description of the service *because it is a limitation on the use that may be made of the service.*" (Italics ours.)

Consequently, they argued, the prohibition in question is a regulation "affecting" the charges of the telephone com-

panies. This argument leads inevitably to the conclusion that if the former service were reduced by the limitation, the toll rates should also be reduced. The record is barren of any evidence that the limitation against surcharges in the tariff resulted in any variation of the rate at all. This argument of the telephone companies that the limitation against service charges shows the value of the service rendered would, in effect, read into the Communications Act the language used in the Interstate Commerce Act. Section 6 of the Interstate Commerce Act provides that schedules filed by common carriers shall state separately any terminal charges, etc., which affect "the value of the service rendered". The absence of such language in the Communications Act shows plainly that Congress intended that schedules required to be filed under Section 203 and enforceable thereunder should deal only with the *charges* of carriers and with classifications, regulations or practices *affecting such charges.*

The Court Failed to Decide Questions Whose Determination is Essential

One of the principal issues in the case was whether the service supplied by the hotels between the PBX boards and the rooms was "wire communication" as defined under Section 3(a) of the Communications Act (47 U. S. C. 153(a)). The Commission argued that such communication was "wire communication". (Brief for United States, pp. 14, 15.). Counsel for the telephone companies on the argument in this Court took the position that such service was not "wire communication" (Stenographic Minutes of Argument, p. 65), which is in accord with the position taken by the hotels. (Appellants' Reply Brief, pp. 4, 5.)

If, despite the foregoing considerations, the tariff regulation is held to be one within the purview of Section 203, there would remain, as the Court has held, the question of its reasonableness which would be an appropriate subject for further proceedings before the Commission. In such proceedings the issue will arise whether or not the service

between the PBX. board and the rooms is "wire communication". If it is "wire communication" the cost will have to be borne by the telephone companies. If it is not, the cost will fall on the hotels. Until this issue is decided, further proceedings before the Commission will be futile. If re-argument is granted, it would seem that this Court should also decide this important issue.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judgment of this Court be, upon further consideration, reversed.

Respectfully submitted,

PARKER McCOLLESTER,
GEORGE DEFOREST LORD,
JOSEPH W. WYATT,
Counsel for Petitioners.

Certificate of Counsel

I, PARKER McCOLLESTER, counsel for the above named appellants, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

PARKER McCOLLESTER,
Counsel for Petitioners

June 14, 1945

APPENDIX

Pertinent Provisions of the Communications Act of 1934

(June 19, 1934, 48 Stat. 1064 ff., 47 U. S. C. §§ 151 ff.)

SECTION 201:

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful:

SECTION 202:

(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

SECTION 203:

(a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall

designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points

named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

SUPREME COURT OF THE UNITED STATES.

No. 446.—October Term, 1944.

Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer and Robert O. Scholz, a Partnership, et al., Appellants, *vs.* The United States of America, American Telephone & Telegraph Company, et al.	Appeal from the District Court of the United States for the District of Columbia.

[May 21, 1945.]

Mr. Justice Jackson delivered the opinion of the Court.

This action was instituted at request of the Federal Communications Commission in the District Court of the United States for the District of Columbia. The Chesapeake & Potomac Telephone Co., which is engaged in rendering telephone service in the District of Columbia, and the American Telephone and Telegraph Co. were made defendants, as also were the appellants, comprising the proprietors of twenty-seven hotels in the District of Columbia. The complaint asks and the court below has granted an injunction which forbids the hotels to make charges against their guests in connection with any interstate or foreign message toll service to or from their premises, other than the toll charges of the telephone companies and applicable federal taxes. The prohibition is based on a provision to that effect in the tariff filed by the telephone companies. Upon the trial, evidence was limited by stipulation to the facts about the Shoreham Hotel, accepted as typical of all defendants.

Telephone service is available to patrons of the hotel without a charge by the hotel. In or near the lobbies, telephone booths have direct connection with telephone company central offices. Calls can there be made without involving the services of the hotel personnel and at the usual tariff rates of the telephone company paid through its coin boxes.

However, modern hotel standards require that telephone service also be made available in the rooms. Equipment for this purpose

is specified by the hotel but is installed and owned by the telephone company. The hotel pays a monthly charge for its use, and its operation is at the hotel's expense. The operating cost is substantial, rentals of the Shoreham in 1943 being $8,680.10 and payrolls for operation amounting to $21,895.62.

Typical equipment consists of a private branch exchange, known as a PBX board, connected with a number of outside or trunk lines and also with extension lines to each serviced room, and other items. This equipment permits calls for various kinds of room service, communication between guests, and calls from station to station within the hotel for which no use of other lines of the telephone company is necessary. The same switchboard and its hotel-employed operators also handle both incoming and outgoing calls for guests, including many long distance messages.

So far as the telephone company is concerned, the toll message coming to its central office from the hotel switchboard is handled much as a similar message from a residence or business station. Within the hotel, however, room telephone service necessitates additional labor as well as use of the equipment. When a call is made from the station in a room, it is placed with the switchboard operator employed by the hotel, and she in turn places the call with the telephone company's long distance operator. It is customary also to render services described as secretarial. Incoming messages may be received during the guest's absence and memoranda of them are made for and delivered to him. Outgoing messages may be transmitted for the guest. Information as to his whereabouts may be left with the operator for communication to callers; he may arrange to be reached at other locations than his room; he may arrange to have telephone service suspended for a period; incoming calls may be limited to those from designated persons, and various other services helpful to comfortable living are supplied by those in charge of the interior telephone system.

Each long distance call placed through the hotel's switchboard is charged by the telephone company to the hotel, not to the guest. The hotel pays the charge and is reimbursed, less credit losses, by collections from the guest. The reimbursement item is separately stated on the guest's bill and is not itself involved in this controversy.

The hotel also seeks to recoup the cost of its service, including equipment rentals, and perhaps some margin of profit, by a service charge to the guests who make long distance calls from their rooms. This charge varies in different hotels but this typical case shows charges of ten cents for toll calls where the telephone tariff is one dollar or less, ten percent of the telephone tariff where the charge is more than one dollar, with a maximum of three dollars per call. This service charge appears on the guest's bill as a separate item, but is stated, like the reimbursement charge as "Long distance", abbreviated to "LDIST".

In January 1942, a proceeding was instituted by the Federal Communications Commission for the purpose of determining whether the charges collected by hotels, apartment houses and clubs in the District of Columbia in connection with interstate and foreign telephone communication were subject to the jurisdiction of the Commission under the Communications Act and what tariffs, if any, should be filed with the Commission showing such charges. No such tariffs were on file with the Commission at the time the proceeding was instituted.

The Commission, December 10, 1943, found that it does have jurisdiction under the Communications Act over the charges collected by hotels and others and ruled that, if such charges are to be collected at all, they must be shown on tariffs on file with the Commission. It thought that the hotel should be regarded as the agent of the telephone companies. It issued an order directing the two telephone companies either to file appropriate tariffs showing charges collected by the hotels in connection with interstate and foreign telephone communications or to file an appropriate tariff regulation containing a specific provision with respect to conditions under which such interstate and foreign service would be furnished to hotels, apartment houses and clubs.

Confronted with these alternatives, The Chesapeake & Potomac Telephone Company filed a tariff provision in which the American Telephone & Telegraph Company concurred, which reads as follows:

'Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff.'

This tariff provision became effective by its terms February 15, 1944. Four days later, this suit was instituted to enjoin the hotels from collecting charges made in violation of the tariff provision, and to enjoin the telephone companies from furnishing such service to these hotels or others which continued to make charges.

The District Court sustained the validity of the tariff.[1] It regarded the hotels as subscribers rather than as agents of the telephone companies. It held that the tariff was violated by collection of surcharges from guests who make interstate or foreign long distance telephone calls or receive such calls "collect". The court did not pass upon the justness or reasonableness of the tariff, being of opinion that such questions were in the first instance to be submitted to and determined by the Commission in appropriate proceedings. An injunction issued against the hotels but not against the telephone companies, the court, however, retaining jurisdiction over the proceedings as to all defendants for the purpose of issuing such further orders as might be necessary to effectuate its decision. Direct appeal was taken by the hotel defendants to this Court.[2]

It has long been recognized that if communications charges are to correspond even roughly to the cost of rendering the service, the use to which telephone installations may be put by subscribers must be subject to some kind of classification and regulation which will conform the actual service to that contracted for. Familiar examples are the classification of residence as against business service with a requirement that the subscriber confine his use of the instruments accordingly. Of course, the subscriber who installs a private branch exchange with multiple trunk lines and many extensions has obviously contracted for a class of service different from one whose installation consists of a single station. One of the problems incident to the service of a subscriber who takes facilities greatly in excess of his own needs in order to accommodate others is to fix upon what terms he may extend the use of telephone facilities to others. This is an aspect of the

[1] The opinion was rendered orally and is not reported.

[2] Pursuant to Section 2 of Expediting Act, 32 Stat. 823; 36 Stat. 1167; 15 U. S. C. § 29; 49 U. S. C. § 45; and Communications Act of 1934, 48 Stat. 1093, 47 U. S. C. § 401(d). Also § 238(1) of Judicial Code as amended, 43 Stat. 938, 28 U. S. C. § 345(1).

problem of resale of utility service which is not confined to the telephone business.[3]

The Communications Act of 1934 recognizes that tariffs filed by communications companies may contain regulations binding on subscribers as to the permissible use of the rented communications facilities. The supervisory power of the Commission is not limited to rates and to services, but the formula oft repeated in the Act to describe the Commission's range of power over the regulated companies is "charges, practices, classifications, and regulations for and in connection with such communication service". 48 Stat. 1070, 47 U. S. C. § 201(b). It is in all of these matters that the Act requires the filed tariffs to be "just and reasonable" and declares that otherwise they are unlawful.[4] By none of these devices may the companies perpetrate an unjust or unreasonable discrimination or preference.[5] All of these must be filed with the Commission in the form it prescribes, may not be changed except after due notice, and must be observed in the conduct of its business by the company.[6] These provisions clearly authorize the companies to promulgate rules binding on PBX subscribers as to the terms upon which the use of the facilities may be extended to others not themselves subscribers.

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[3] Cf. Re New York Telephone Co., 26 P. U. R. (N. S.) 311 (N. Y. 1938), 30 P. U. R. (N. S.) 350 (N. Y. 1939); People *ex rel.* Public Service Commission *v.* New York Telephone Co., 262 App. Div. 440 (1941), aff'd without opinion, 287 N. Y. 803; Hotel Pfister *v.* Wisconsin Telephone Co., 203 Wis. 20 (1930); Jefferson Hotel Co. *v.* Southwestern Bell Telephone Co., 15 P. U. R. (N. S.) 265 (Mo. 1936); Re Hotel Marion Co., P. U. R. 1920 D, 466 (Ark. 1920); Connolly *v.* Burleson, P. U. R. 1920 C, 243 (N. Y. 1920); Re Hotel Telephone Service and Rates, P. U. R. 1919 A, 190 (Mass. 1918); Hotel Sherman Co. *v.* Chicago Telephone Co., P. U. R. 1915 F, 776 (Ill. 1915); 1015 Chestnut Street Corp. *v.* Bell Telephone Co. of Pennsylvania, P. U. R. 1931 A, 19, 7 P. U. R. (N. S.) 184 (1930, 1934); Budd *v.* Southwestern Bell Telephone Co., 28 P. U. R. (N. S.) 235 (Mo. 1939).

Remetering of electric energy creates similar problems of regulation, often dealt with by tariff prohibition of remetering. See Lewis *v.* Potomac Electric Power Co., 64 F. 2d 701 (App. D. C. 1933); Karrick *v.* Potomac Electric Power Co., P. U. R. 1932 C, 40 (D. C. Sup. Ct. 1931); Florida Power & Light Co. *v.* Florida, 107 Fla. 317 (1932); Sixty-seven South Munn *v.* Board of Public Utility Commissioners, 106 N. J. Law 45 (Sup. Ct. 1929), aff'd 107 N. J. Law 386 (Court of Errors and Appeals 1930), cert. denied, 283 U. S. 828; Public Service Commission *v.* J. & J. Rogers Co., 184 App. Div. 705 (N. Y. 1918); People *ex rel.* N. Y. Edison Co. *v.* Public Service Commission, 191 App. Div. 237 (N. Y. 1920), aff'd, 230 N. Y. 574 (1920).

[4] 47 U. S. C. § 201.

[5] 47 U. S. C. § 202.

[6] 47 U. S. C. § 203(a), (b), (c).

Of course, such authority is not unlimited. The telephone companies may not, in the guise of regulating the communications service, also regulate the hotel or apartment house or any other business. But where a part of the subscriber's business consists of retailing to patrons a service dependent on its own contract for utility service, the regulation will necessarily affect, to that extent, its third party relationships. Such a regulation is not invalid *per se* merely because, as to the communications service and its incidents, it places limitation upon the subscriber as to the terms upon which he may invite others to communicate through such facilities.

It is urged, however, that the regulation in question is unlawful because it is unreasonable. It is said that it invades the relationship between hotel and guest excessively, and denies to the hotel the right reasonably to recoup its cost and to profit by the services it renders. But we agree with the District Court that where the claim of unlawfulness of a regulation is grounded in lack of reasonableness, the objection must be addressed to the Commission and not as an original matter brought to the court. We think that the Act confers jurisdiction upon the Commission to hear appellants' grievances against the substance of this regulation. Indeed, appellants inform us that the American Hotel Association, on behalf of its members, including the appealing hotels, has filed a formal complaint with the Commission alleging that the new provision of the tariff schedule was unreasonable discriminatory and unlawful, and asking for investigation and, at the same time, asserting that the tariff was illegal. Action on that complaint has been held in abeyance by the Commission pending the final decision on the jurisdictional question in this suit.

It is clear that the charges being made in this case violate the regulation. The charges made are not based on the service rendered by the hotel but vary in accordance with the toll charge made by the telephone company for communications services. So far as appears, the service rendered by the hotel in handling a guest's toll call from Washington to Baltimore is substantially the same as for a call to San Francisco. But for like service, the charge varies with the amount of the telephone tariff for the communication. The guest's charges are so identified with the communications service that they are brought within the prohibitions of this regulation.

Since the regulation, apart from questions of reasonableness which must be presented to the Commission, is a valid regulation of the subscriber's use of the telephone facilities involved, a departure from the regulation is forbidden by the Act and the prosecution of an action to restrain a violation is authorized.[7] When an action for enforcement is instituted in any District Court, the Act expressly provides that it shall be lawful "to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation or practice under consideration", and decrees may be made against such parties in the same manner and to the same extent as authorized with respect to carriers.[8] One can hardly gainsay the Government's assertion that the appellants here are persons interested in and affected by the regulation in question and, therefore, are proper parties defendant in the action and injunction could properly issue against them.

It is urged, however, that inasmuch as the Court did not enjoin the telephone companies, the hotels should not be enjoined. Four days after the effective date of this regulation, the hotels had indicated no intention to comply with it although they had had due notice. It was well within the discretion of the trial court to conclude that this justified an injunction. Four days of default by the subscriber, however, might not be regarded as requiring an injunction which would compel the telephone companies to cut off service on which many persons rely. We are unable to see that the hotels have been prejudiced by the failure to enjoin the telephone companies or are in a position to complain of the omission of what would have been an additional hardship to themselves.

Much has been said in argument about the theory of the relationship between the hotel and the telephone company and the discrepancy between the view of the Commission that the contract created an agency and that of the District Judge who said that the evidence fails to show that the hotels are agents of the telephone company, and held that "the hotels are subscribers". We do not think it is necessary in determining the application of a regulatory statute to attempt to fit the regulated relationship into some common-law category. It is sufficient to say that the

[7] 47 U. S. C. § 401.
[8] 47 U. S. C. § 411.

relation is one which the statute contemplates shall be governed by reasonable regulations initiated by the telephone company but subject to the approval and review of the Federal Communications Commission.

Without prejudice to determination by the Commission of any of the questions raised in this case, we hold that the injunction was properly issued and the judgment below is

Affirmed.

Mr. Justice BLACK and Mr. Justice DOUGLAS took no part in the consideration or decision of this case.